THE INSTITUTION OF SHARĪʿAH IN OYO AND OSUN STATES, NIGERIA, 1890 - 2005

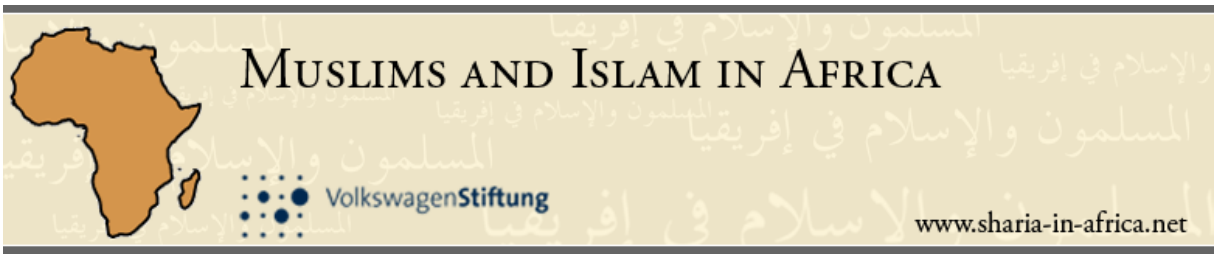
BY

ABDUL-FATAH 'KOLA MAKINDE
C.A.I.S, B.A., M.A. (Ibadan) P.G.D.E. (Ilorin)

A Thesis in the Department of Arabic and Islamic Studies,
Submitted to the Faculty of Arts
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY
of the
UNIVERSITY OF IBADAN

March, 2007



MUSLIMS AND ISLAM IN AFRICA

"Muslims and Islam in Africa" is an online publication. It is a result of a research project on sharia debates in selected African countries, funded by Volkswagen Foundation. It has a multi-disciplinary approach and covers current research in the field of Muslims and Islam in Africa. There are no specific requirements as to the language of publication and to the length of the contributions.

Contributions to this series may be submitted directly to the editors. Acceptance is decided upon by the editors and the academic advisory board.

"Muslims and Islam in Africa" should be hosted by the OPUS document server at the university library of Bayreuth University: http://opus.ub.uni-bayreuth.de/schriftenreihen.php?la=de but due to administrative and bureaucratic obstacles it is hosted by the private website www.sharia-in-africa.net

EDITORS

Dr John Chesworth
The Centre for Muslim-Christian Studies, Oxford, UK
j.chesworth@cmcsoxford.org.uk

Dr Franz Kogelmann
Bayreuth University, Germany
franz.kogelmann@uni-bayreuth.de

BOARD OF REFERENCE

ABSTRACT

The spread of Islam to Yorubaland was accompanied by the institution of *Sharī'ah* (the Islamic law), and Muslims in the area applied it, alongside the Customary and Common Laws during the pre-colonial period before its abolition by the colonial government. However, very little research has been done in this area. Therefore, this study examined the institution of *Sharī'ah* in Oyo and Osun States of Nigeria with reference to Yoruba Customary Law which had been in existence and the Common Law.

The research employed historical and survey methods using archival materials, interview schedules and a questionnaire. 10 Muslim and Christian leaders from each state were randomly selected. The respondents to the questionnaire were selected using random sampling technique. They consisted of 240 people, 50 each of Muslim and Christian leaders in each state and 20 randomly sampled members for each of the Houses of Assembly in the states because of their constitutional power to pass Bills to Laws. Descriptive statistics was employed in analyzing the data.

The study revealed that the British colonialists, during the colonial era, used their authority to replace *Sharī'ah* with Common Law through Indirect Rule. It identified that *Sharī'ah* issue is contentious because of general misunderstanding and misconceptions of its origin, tenets and practices. It also discovered that the agitation of the Muslims in the selected states for *Sharī'ah* was based on the premise that both Yoruba Customary and Common Laws did not cover certain provisions under *Sharī'ah,* such as *'iddah*' waiting period for a widow', *al-hadānah* 'custody of children' and *mīrāth* 'inheritance'. The study revealed that Muslims found psychological relief in the *Sharī'ah* application in Yorubaland. Despite its official replacement, some Muslims had firm conviction in using *Sharī'ah*; hence, it is applied at individual, private and non-governmental levels as evidenced in the activities of Faya Group in Ikirun, Bamidele Movement in Ibadan and Islāhuddīn Association in Iwo, as well as the Independent *Sharī'ah* Arbitration Panels in Ibadan and Osogbo. It was discovered that while 93.0% of the Muslim respondents of both states were agitating for the establishment of *Sharī'ah* Courts, 53.0% of the Christian respondents showed negative attitude to the resuscitation. 60.0% of the respondents of Oyo State House of Assembly supported the agitation, but 75.0% of those in Osun State did not.

The study establishes that *Sharī'ah* gives psychological satisfaction to Muslim and discovers that legal pluralism could be adopted to solve the conflict between *Sharī'ah* and

Key words: ***Sharī'ah*, Institution, Yoruba Customary Law, Common Law, Religion.**

Word Count: **450.**

DEDICATION

This work is dedicated to:

Allah, my Creator and Provider;

My parents: Late Alhaji Nasiru Ajanı Makinde and Alhaja Maryam Abegbe Makinde;

My brothers and sisters;

My wives: Mrs. Hidiat A. Makinde & Badrat F. Makinde;

My children: Abdul-Basit, Hamidah, Abdul Mu'izz, Mu'izzat and Fa'izzah; and

All seekers of knowledge about *Sharī'ah.*

ACKNOWLEDGEMENTS

All praise is due to Almighty Allah. I am particularly grateful to Allah for His bounties, guidance and protection over me and for endowing me with the entire wherewithal required for the completion of this work. Then, my gratitude goes to my parents for their invaluable contributions towards my success in academic career. My late father, Alhaji Nasiru Ajani Makinde would forever be remembered with gratitude. May Allah grant him *Al-Janah*. It is my prayer that my mother, Alhaja Maryam Abegbe Makinde would live long to enjoy the fruits of her labour.

I acknowledge with appreciation and gratitude the supervisory role played by my respectable and amiable supervisor, Dr. K.K. Oloso on this work. In spite of his tight schedule of duties and assignments, he took time to painstakingly go through the manuscripts and made necessary corrections, comments and suggestions to improve the quality of the work. I really cherish his guidance, accommodation and words of encouragement. May Allah continue to support him in all his endeavours.

I also wish to express gratitude to the lecturers in the department who played one role or the other on this work. Prof. S.H.A. Malik, Dr. A.F. Ahmad, Dr. M.O. Abdul-Rahman, Dr. D.A.A. Tijani, Dr. A.A. Rufai, Dr. S.A. Shittu, Dr. A.A. Oladosu and Mr. M.K. Kareem are all worthy of my appreciation. However, my special gratitude goes to Dr. L.O. Abbas for his words of encouragement, pieces of advice and support at all times. May Allah support them all.

It is very pertinent at this junction to give thanks to my brothers, sisters and friends who always showed concern about my affairs and prayed for me to complete this work. Alhaji. R.A. Makinde, Messrs Abdur-Rauf Falana, Abdul-Ghafar, Taofiq and Qamarud-din Makinde as well as Mrs. Risqat Oyegbile and Mrs. Muhibat Alade are recognised. I appreciate the role played by my friends, Alhaji M.A. Raji, Bro T.A. Sanusi and others at YOUMPII AS-SA'ID, NACOMYO and CIRCLE OF WISDOM levels. In fact, they are too many to mention. May Allah strengthen our love and togetherness forever.

I should not be ungrateful to my colleagues at work in the Osun State College of Education, Ila-Orangun who rendered assistance at one end or the other: Dr. R.I. Adebayo, Alh. B.R. Raheem, Alh. A.W.M. Zakariyah and Mr. L.A. Jimoh deserve my appreciation. Alh. M.A. Folorunso and other colleagues at the Osun State College of Education, Ilesa equally need to be mentioned for their concern and encouragement. May Allah endow them success in their undertakings.

My appreciation also goes to all my correspondents and informants for supplying me with necessary information. Their contributions to this thesis are really commendable. I am particularly grateful to Kazeem Durodayo who assisted in getting information on the Internet. Those who supplied me with useful research materials are also recognized. My prayer to Allah is to give them all assistance they require.

The financial assistance rendered by Alh. Fatai A. Adelu, the D.P.M. of Ifedayo Local Government in Osun State deserves a special note at this juncture. It was out of interest that he expressed his willingness to render financial assistance and personally settled some cost of production to the computer company that handled this work. May Allah in his infinite mercy reward him in abundance. *Jazaka llahu Khayran*. The efforts of Bro Akeem Adekunle in typing the manuscripts as well as Bro. Muyideen Olateju and his workers who handled the computer typing of this work are appreciated. I am also grateful to Dr. M.A. Kehinde of the English Department, University of Ibadan, Ibadan who played one role or the order on the thesis. May Allah shower His mercy on him.

A special appreciation goes to my wives: Hidyat Adeola Makinde and Badrat Folasade Makinde and my children: Abdul Basit, Hamidat, Abdul-Mu'izz, Mu'izzat and Fa'izzat for their love, endurance, co-operation and prayers. May Allah grant us all long life to reap the fruits of our labour.

On a final note, since there is no way by which I can exhaust the list of those who deserve my appreciation, I would therefore conclude by praying to Allah to assist and reward all who have contributed in one form or the other to the completion of this work. May Allah bless them all and crown their efforts with brilliant success.

Abdul-Fatah 'Kola Makinde

CERTIFICATION

I certify that this work was carried out by Abdul-Fatah 'Kola Makinde in the Department of Arabic and Islamic Studies, University of Ibadan, Ibadan.

SUPERVISOR

K.K. Oloso,

C.I.A.S., B.A., M.A., Ph.D. (Ibadan),

Senior Lecturer, Department of

Arabic and Islamic Studies,

University of Ibadan, Ibadan.

TABLE OF CONTENTS

LIST OF TABLES

GLOSSARY OF NON-ENGLISH WORDS

‘*Abbasid*	Abbasid caliphate or dynasty which began with Abdul-‘Abbas As-Saffah
’ Ādāb	All sorts of moralities, etiquettes or virtues
‘*Adl*	Just, Justice
’Aghlālan	Chained with handcuffs. A term used when a jail term was pronounced on an accused
’Ahl-adh-Dhimmah	People of Covenant – Jews and Christians
’Ahl-al-Kitāb	People of the Book
Alebu	Defect. Yorubalised version of al-‘ayb
Alefa	Vicegerent or successor. Yorubalised version of *khalifah*
Alfa	An Islamic scholar
Alkali	An adulterated way of calling *Qādi*-a judge
’Amrun‘aẓīmun	A grievous offence. A term used when an accused was alleged of a criminal offence
‘Aqīdah	belief or faith
Bàtá	A type of drum in Yorubaland
Bayyinah	Evidence
Dārul-Qaḍā	Court of Justice
Da‘wāh	A claim or law suit
Da‘wah	A call or invitation to the way of Allah
Dīnār	A monetary unit or money
Dirham	Money or monetary unit
Dùndún	A type of drum in Yorubaland
Faaya	A group or branch of Bamidele Movement based in Ikirun
Farīdah	Obligatory act
Fiqh	Islamic Jurisprudence
Gángàn	A type of drum in Yorubaland
Gbèdu	A type of drum in Yorubaland
Ḥadānah	Islamic Law terminology for guardianship or custody of children
Ḥadd	A term for punishment of criminal offences under Islamic Law

Ḥadīth	Record of the sayings, deeds, custom, traditions and practices of Prophet Muhammad (S.A.W).
Ḥajj	Pilgrimage to Makkah
Ḥakīm	A judge
Ḥalāl	Permissible
Ḥarām	Prohibited or unlawful
'Ibādah (pl.) 'Ibādāt	Devotional aspects of Islam like prayer, almsgiving, fasting and pilgrimage
'Īd -al-fiṭr	Festivity after Ramadan fast
'Iddah-ạt-Talaq	Waiting period for a divorced woman
Ìdí-Igi	Yoruba custom of distributing the property of the deceased on the basis of number of wives
'Ijtihād	Legal speculation of individual jurists
Ilé-Alikali	Alkali's Compound
Ilé-Kóòtù	Court's Compound-Where *Sharī'ah* judge lived
Ìlú-Aró	The town whose people are known with dying
'Imām	A spiritual leader who leads prayers
Ìmòle	Adultrated way of calling a Muslim in Yorubaland
Istidlāl	Deduction or inference
Istih□sān	Preference
Istishāb	Concordance
Istislāh	Establishment of legal principle for useful purpose
I'tiqādāt	All sorts of beliefs or creeds in Islam
Jam'iyyat Iṣlaḥudeen	Islahudeen Association
Jihād	Striving in the course of Allah
Kāfatan	Whole-heartedly or completely
Khalīfah	Successor or vicegerent
Khamr	Intoxicant or alcohol
Khāshi'u	Submissive or humble
Khasm	A term used for the parties to a lawsuit
Khul'	Divorce at the instance of wife under Islamic law
Kufār	Infidels
Madrasah	Arabic School

Mahr/Ṣadāq	Bride gift
Majlis-Shūra	Consultative Forum
Maʿrūfāt	Virtues
Maẓalim	Court where injustice is addressed
Mīrāth	Inheritance
Muʿāmalāt	Transaction and Civil matters
Mubāraʾah	A type of divorce under Islamic law whereby the parties mutually agree to dissolve their marriage
Muddāʿalayhi	Defendant
Muddāʿi	Claimant or Plaintiff
Muftī	Juris-consult
Mukhtaṣar	A compilation on Islamic law by khalil al-Jundi
Munkarāt	Vices
Murāfaʿāt	Litigations
Muslim	An adherent of Islamic religion
Nikāh	Marriage
Oba	A monarch or king
Oríkì	Yoruba eulogy
Orí-ọjorí	Yoruba custom of distributing the property of the deceased on the basis of number of children
Qāḍi	A judge
Qāḍi al-quḍāt	Chief Judge
Qasam	An oath
Qiyās	Analogical deduction
Qurʾān	The Glorious Book of Allah sent through Prophet Muhammad to the whole world
Rajmu bi-lisān	Tongue – lashing or reproof
Ramaḍān	The 9th month of the Lunar or Islamic calendar
Risālah	A compendium of Abu Zayad al-Qayrawan
Ṣalāt	Prayer
Ṣalāt al-Jumʿah	Friday congregational prayer
Sahīḥ	Valid or authentic
Satrul-ʿawrah	Covering of nakedness
Ṣawm	Fasting

Sèkèrè	A musical instrument
Seki uku	A triple divorce in Hausa language
Seriki Hausawa	The king or leader of the Hausa people or community
Shahādah (pl.) Shuhūd	Witness
Sharī'ah	Path of Allah ordained for mankind known as Islamic law or canon law of Islam
Shi'ites	A sect in Islam. Followers of Ali (the 3rd Caliph) who do not recognize the three earlier caliphs
Sujūd as-sahw	Prostration of forgetfulness
Sunnah	Custom, traditions and practices of Prophet Muhammad (S.A.W.) and that of his companions that received his tacit approval.
Sunni	Practitioners of the tradition of Prophet Muhammad (S.A.W.)
Sūratun-Nisā'i	Chapter of the women. It is the chapter four of the Holy Qur'an
Tafsīr	Exegesis of the Qur'an
Ṭalāq	Divorce
Ṭalāq bid'a	A disapproval manner of divorce
Ulamā 'as-su'	Western educated Muslim elites or scholars with devilish intention to Islam
Umayyad	Umayyad caliphate or dynasty which began with Mu'awiyyah b. Abu Sufyan
'Ummah	Community
'Uqūbāt	Punishments or penalties under Islamic criminal law
'Urf	Custom or customary law
Zakāt	Almsgiving
Zinā	Adultery or fornication
Zumratul-Mūminīn	Bamidele Movement in Ibadan

CHAPTER ONE

1.0. INTRODUCTION

1.1. THE MEANING AND SCOPE OF *SHARĪ'AH*

1.1.1 The meaning of *Sharī'ah.*

The word *Sharī'ah* is derived from an Arabic root. It literally means "a course to the watering place and a resort of drinkers."[1] It also means "water hole", "drinking place" or "approach to a water hole."[2] It was popular with, and important to the pre-Islamic Arabs who were mostly desert dwellers for whom water was a precious commodity. It was then applied by them as a course or way leading to a watering place which was permanently and clearly marked out.[3]

Sharī'ah however acquired a new significant meaning with the emergence of Islam. It technically represents or means the path ordained by Allah – the Creator, Nourisher and Cherisher of every being and Knower of everything through the last of His messengers, the Prophet Muhammad (SAW) to be followed by every human being to earn His pleasure and to avoid His wrath in this world as well as in the hereafter. It is the law of Allah which He enacted for human beings in their beliefs, religions, moralities, socials, to regulate their affairs in all spheres of life for the purpose of achieving success in this world and the hereafter[4].

Sharī'ah in the *Encyclopaedia of Islam* is defined as 'the road to the water place, the clear path to be followed, the path which the believer has to tread, the religion of Islam, as a technical term, the canon law of Islam, the totality of Allah's commandments.[5] The new *Encyclopaedia Britannica* however defines *Sharī'ah* as "a divinely ordained path of conduct that guides the Muslim toward a practical expression of his religious conviction in this world and the goal of divine favour in the world to come".[6]

In the *Encyclopaedia of Religion* by Mircea Eliade, *Sharī'ah* is referred to as "a path trodden by camels to a water source; and from the Islamic terminology, the way that leads the righteous believer to paradise in the afterlife." It is stated further that the *Sharī'ah* is not deemed a religious law by virtue of the subject matters it covers, for these range far beyond the sphere of religious concerns, strictly speaking, and extend to the mundane affairs of everyday life. Rather, its religious character is due to the Muslims belief that it derives from divinely

inspired sources and represents God's plan for the proper ordering of all human activities[7].

The Holy Qur'an puts the meaning of *Sharī'ah* in a very clear term when it describes it as the path which should be followed. It is a path which Allah commands the Prophet as well as the Muslims to follow and they are enjoined not to follow the desires of the ignorant ones. The Qur'an states as follows:

ثم جعلناك على شريعة من الأمر
فاتبعها ولا تتبع اهواء الذين لايعلمون

> Then we put you on the right path of religion (Sharī'ah): so follow it and do not follow the desires of ignorant men[8].

As a matter of fact, divine decrees, injunctions and principles enunciated in the Qur'an meant for the guidance of mankind are the basis of *Sharī'ah*. Therefore, the entire life of who believes in Allah and the Qur'an should be guided in all respects, by the provision of *Sharī'ah*. For the purpose of the divine laws is to enforce good conduct in all respects and to promote the welfare of the individual and the society. Thus the term *Sharī'ah* covers all aspects of life. It is the circle that embraces in its orbit all human action; it stands for the law which is the "divinely ordained path of rectitude"[9].

1.1.2. **The scope of *Sharī'ah***

As we have noted above, *Sharī'ah* encompasses all spheres of man's existence including the terrestrial and the celestial.

Noting the difference between *Sharī'ah* and the Western systems of law in the terms of scope, the new *Encyclopaedia Britannica* states that the scope of *Sharī'ah* is much wider, since it regulates man's relationship not only with his neighbours and with the state, which is the limit of most other legal systems, but also with his God and his own conscience. Ritual practices, such as the daily prayers, alms-giving, fasting, and pilgrimage are an integral part of *Sharī'ah* law and usually occupy the first chapters in the legal manuals. The *Sharī'ah* is also concerned as much with ethical as with legal rules, indicating not only what man is entitled or bound to do in law, but also what he ought, in conscience, to do or refrain from doing[10].

Sharī'ah is not merely a system of law, but a comprehensive code of behaviour that embraces both private and public activities.[11] Ajetunmobi[12] observes that *Sharī'ah* covers every act of man from the time he is born till when he breathes his last, and from when he wakes up in the morning till he goes back to bed at night. It even covers the mode of his sleep.

Islamic jurists have identified the scope that *Sharī'ah* covers. These are: *I'tiqādāt* (Beliefs or creeds), *'Ibādāt* (Devotions), *'Ādāb* (Moralities), *Mu'āmalāt* (Transaction / Civil matters) and *'Uqūbāt* (Punishments/Penalties). They are briefly discussed as follows:

(i) *I'tiqādāt* refers to all sorts of belief, creed or faith in Islam. It falls under the spiritual act of man and serves as its basis. Hence, the first pillar of Islam falls under it and whoever fails to possess it could not be regarded as a Muslim. It requires that man should believe that Allah is Unique in existence, He is the Supreme Creator of all things, He has absolute power over everything and He alone should be worshipped. Such a belief in Allah has led the Muslims to the study of theology, philosophy and mysticism as distinct and impregnable disciplines in Islamic Studies[13].

(ii) *'Ibādāt* covers the devotional aspect of the *Sharī'ah*. It therefore deals with all acts of worship in Islam; hence it basically concerns with the remaining four pillars of Islam i.e. *Salāt* (Prayer), *Zakāt* (almsgiving), *Sawm* (Fasting) and Hajj (Pilgrimage to *Makkah*). *'Ibādah* (worship or devotion) is expected to be carried out by whoever possesses *'Aqīdah* (belief or faith). Should he neglect the former, the latter shall be regarded as useless. Therefore, the two are interrelated and inter-dependent.

(iii) *'Ādāb* brings about rules of conduct, decorum, etiquette and morality. It is the absolute virtue, and etiquette prescribed by Allah through revelation to make the society worthy of living. The main objective of *Sharī'ah*, according to Maududi,[14] is to construct human life on the basis of *Ma'rūfat* (Virtues) and cleanse it of the *Munkarāt* (Vices). *'Ādāb* is therefore the act of doing good and forbidding evil; hence the Qur'an tags the Muslims as a group evolved for mankind to enjoin good and forbid evil.[15] Its scope is wide, cutting across every act of man. Indeed, it regulates the relationship between man and his fellow man as well as other creatures of Allah.

(vi) *Mu'āmalāt* deals with human transaction and civil matters. It covers man's activities in the areas of politics, economy, administration, education and socialization. This does not exclude whatever profession or work man may choose in life and how to deal, or what to do, with his earnings, the type of education he may pursue be it artistic, scientific, technological, vocational etc. and how to utilize the knowledge acquired there from to the benefit of humanity in general. It also covers the political system a community may adopt, as well as the role of the citizens (ruler and subject) within the context of politics and administration in such a way that would receive the pleasure of Allah. Furthermore, it covers all sorts of contract a man may make with his fellow man as an individual, with a group of people or with the society at large.

Enunciating this aspect of *Sharī'ah*, the World Court Judge, C.G. Weerammantry[16] notes:

> the civil aspects of Sharī'ah include the notions of caring and sharing; trusteeship of property; brotherhood and solidarity; universalism; fair industrial relations; human dignity; dignity of labour; the ideal law; fair contract; commercial integrity; freedom from usury; rights of women; right of privacy; abuse of rights; and condemnation of anti-social conducts. Others are charitable trust; juristic personality; individual freedom; equality before the law; legal representation; presumption of innocence; notion of non-retroactivity; supremacy of law; judicial independence; judicial impartiality; limited sovereignty; tolerance; democratic participation and being one's brother's keeper.

(v) *'Uqūbāt* deals with punishments and penalties. It is a term used for Islamic criminal law. It deals with the right of Allah to punish sinners and rights of man to penalize criminals in the society. Stating the objective of Islamic criminal law, Noibi[17] asserts that "it aims at facilitating the fulfilment of the purpose of human existence." He explains further that, "since, from Islamic view-point, the purpose of human existence is the doing of the Divine Will, it is necessary to ensure that circumstances prevail which will make the fulfillment possible." To this end, those things, which the Muslim jurists have described as the "five essential elements", must be protected from destruction or corruption. These are human life, faith, intellect, chastity and property.

In the words of Weerammantry,[18] "the criminal aspects of *Sharī'ah* are those concerning murder, robbery, stealing, drug peddling, smuggling, adultery, fornication and others". Therefore, *'Uqūbāt* covers all spheres of security for both the state and the individual citizens, either at home or abroad. The role of the law enforcement agents in their various groups and the duty of members of the bench in the judiciary are not excluded.[19] The scope of this fifth division of the *Sharī'ah* covers all the other four divisions that precede it. Therefore, its scope is very wide and comprehensive.

1.2. THE *SHARĪ'AH* AS A LEGAL PRACTICE

1.2.1. The *Sharī'ah* from general and legal precepts

As earlier mentioned, *Sharī'ah* encompasses all spheres of human life. It is not confined to legal matters. It is the conglomeration of politics, economy, administration, education, socialization, religion, etc. In fact, it is all embracing. The practice of the *Sharī'ah* therefore means the practice of Islam and vice-verse. The two may, therefore, be regarded as synonymous in this context.

The *Sharī'ah* could be seen from the perspective of general and legal matters. Certain precepts of the *Sharī'ah* carry the force of law while others do not. Those precepts which carry the force of law are regarded as legal matters or precepts while others are general matters of the *Sharī'ah*. Distinguishing between general and legal matters, Ajetunmobi observes that:

> an example of general precept is the process of amending a ritual prayer (*Salāt*) in case of omission or commission during its observance. Such a mistake in prayer can be rectified by the prescribed prostrations (*Sujūd as-sahw*) without necessarily leading to a court action against the worshipper. The legal matter on the other hand involves the act of violating any directives of the *Sharī'ah* which is enforceablein a court of law. An example is the breach of marriage contract between a couple. [20]

It is to be noted here however that *Sharī'ah* legal matters cover the five divisions of the scope of *Sharī'ah* already mentioned. Ajetunmobi[21] further cites instances in this regard as prescribed by the *Sharī'ah*. The act of apostasy (a violation of *'Aqīdah*) warrants death penalty. The same death penalty has been prescribed for a complete denial of *Salā*t (an act of *'Ibādah*) by a Muslim who

consequently refrains from its observance. Dealing in alcohol (*Khamr*) and intentional killing of a fellow human being have their respective penalties (under the promotion of *'Ādāb*). Such acts as marriage, inheritance, and many other contractual obligations (all under *Mu'āmalāt*) are enforceable in *Sharī'ah* law courts and therefore fall under the *Sharī'ah* legal matters.

1.2.2. ***Sharī'ah*** **legal theory and legal practice**

Scholars have tried to discuss *Sharī'ah* from the perspective of legal theory and legal practice. Although both are inter-related, *Sharī'ah* legal theory is different from *Sharī'ah* legal practice. While looking at the relationship between the two, Schacht states:

> We must think of the relationship of theory and practice in Islamic law as a clear division of spheres but as one of interaction and mutual interference, a relationship in which the theory showed a great assimilation power….[22]

As Schacht puts it, Legal theory later subsumes every relevant act under one of the 'five legal categories' which are: obligatory, recommended, indifferent, disapproved and forbidden and discusses the relationship between these categories and the concepts of validity, nullity and intermediate degrees.[23]

As for legal practice, it deals with the execution or the legal theory in the law courts. It covers the administration of justice in its general term. It deals with the organizational structure of courts, their jurisdiction as well as practice and procedure. It also covers court personnel and their welfare, court building, and many other matters related to the court.[24] In a nut-shell, the legal practice sees to the implementation and execution of the legal theory, this is why they are inter-related.

1.2.3. **Historical development of *Sharī'ah* legal practice**

The application of *Sharī'ah* commenced right from the period of the holy Prophet Muhammad (S.A.W.). He combined the work of a religious/political leader with that of a judge. He was the fountain – head of justice. After his death, the judiciary again became an independent unit, the *Khalīfah* (successor) remaining the supreme judge.[25] That is to say that the status quo of judiciary as it was during the life of the Prophet remained during the tenure of each of the four orthodox Caliphs.

The *Umayyad* period witnessed a little change on judicial matters. The *Umayyads*, or rather their governors, took the important step of appointing Islamic judges or *Qadis*. The office of the *Qadis* was created in and for the new Islamic society which came into being, under the new conditions resulting from the Arab conquest, in the urban centers of the Arab Kingdom.[26] The work of the *Qadis* became inevitably more and more specialised, and we may take it for granted that from the turn of the century (A.D. 715 – 20) appointments as a rule went to specialists.[27]

The Abbasids took a step further on the independence of the judiciary. During the Umayyad period, the *Qadis* were the legal secretaries of the governors; hence the governors themselves exercised whatever criminal justice came within the competence of the administrative authority. Under the Abbasids however, the office of *Qādi* was separated from the general administration and became bound to Islamic Law in substance and procedure. Therefore, the Abbasid did achieve the permanent connexion of the office of *Qādi* with *Sharī'ah*, the sacred law.[28]

The 'Abbasid also created the office of the Chief Judge (*Qādi al-qudāt*). It was originally an honorific title given the *Qādi* of the capital whom the caliphs would normally consult on the administration of justice. The first to receive the title of *Q*ā*di al-qud*ā*t* (Chief Judge) was the famous Abu-Yusuf, who served under *al-Mahdi* and his two sons, *al-Hadi* and Harun.[29] Therefore, judicial administration in Islam continued to improve with time and the system of appeal to *Mazali*m courts developed before the Abbasids seized power from the Umayyads.[30]

In the early days of Islam, there were no court buildings. Cases had to be decided openly in a public place like the Prophet's mosque or *Dārul-Qad*ā (Court of justice).[31] Therefore judges decided cases in either their respective residences or

mosques. However, the organisation of the court system was orderly. There used to be a court registrar who would receive and record all cases for presentation to the judge on his arrival in court. If the cases recorded for a day were many, the untreated ones would be adjourned to the following day.[32]

Judges of early period detested taking remuneration from the coffers of the government for their judicial services, so also did they abhor collecting fees from litigants. They got their means of livelihood through other jobs like trading which they combined with the post of *Qādi*. However, judges were persuaded later by the ruling authorities to take some tokens for their services to the community. Still, hardly did a *Qādi* earn more than twenty *dīnār* prior to the advent of the Abbasids who enticed judges with high remuneration.[33] Such enticement later led to loss of reputation and prestige by the judges who thereby became toys in the hands of the rulers. For example, under *al-Ma'mun*, the pay of the judge of Egypt is said to have reached 4000 *dirhams* a month.[34]

It is pertinent to note at this juncture that the history of the *Sharī'ah* law since the advent of Islam can be easily divided into seven periods as follow: First stage-the period of the Holy Prophet or the Legislative Period; Second Stage-the Repubican Period; Third Stage-the Dynastic cum Representative Period; Fourth Stage-the Scientific Research Period; Fifth Stage-the Research Fixation Period; Sixth Stage-the Transcription Period; and, Seventh Stage-the Freewill Period (which may also be termed a period of decay).[35] These stages are to be briefly discussed here.

i. First stage – The legislative period (610 – 32 C.E.)

The Legislative Period was the period of the Prophet. During this period, the different aspects of the *Sharī'ah* law were outlined by the revelations as contained in the Qur'an and explained by the *Sunnah* of the Prophet. Working through the principles of practical necessities the legislations for the law came as a solution to over-arising problems. The personality of the Prophet was a pivot round which the legislative, administrative and judicial affairs moved, and for the purpose of solution of legal problems, it was to hm that the people referred.[36]

The period of revelation extends a little over twenty-two years, out of which twelve years plus relate to Makkah before the Hijrah and the rest ten years to Madinah. The Qur'an and the *Sunnah* were accepted as the basis of religion, and

as legislation they settled down the principles of belief, acts of worships, family structure, transactions, penal matters and the methods of government of State admistration, among other general principles.[37]

At this period, the Prophet showed the right path and laid down outlines for the future system of law, morality and religion. At first, he used to administer justice himself and appointed persons to administrative positions on the basis of their qualifications. He delegated the important function of judicial administration to savants of Madinah who had embraced the faith. He always acted for impartial justice and even separated the executive control from the judiciary. The judicial process was simple, and evidence, by oath or otherwise, was the mode accepted in deciding the cases. The decisions were to be based upon principles furnished by these Qur'an and the *Sunnah*, and, in the absence of any provision in these fundamental sources, the exercise of personal reasoning was permitted by the Prophet, for example, to Mu'adh ibn Jabal. The judges appointed by him were directed to admisnister justice strictly in accordance with the directions given to them.[38]

ii. Second stage: The republican period

The second period of legal development began from the time Abu Bakr was elected Caliph in 11 A.H. and continued till 'Ali, the fourth Caliph, fell at the hands of an assassin in 40 A.H.

The characteristic of this period was people's strict adherence to the Qur'an and the *Sunnah*. But the time had changed and new spirit had breathed into the Muslim life. The need for an expansive social system was felt and, happily, this want was supplied by the Prophet himself who used to consult his companions not only on matters on which the revelation was silent, but also on questions as to the application of the revelations themselves.[39]

In the hands of the second Caliph, 'Umar, it became the third source of law and was known as Ijmā'Ummah, i.e. consensus of the community. As a way of solution to a difficult legal problem, he would convoke an assembly of the Muslims in order to settle it by unanimity. They had to decide the points with reference to the spirit in which certain traditions were handed down by the Prophet and with reference to the necessity of the moment and the interests of Islam. They had to determine what modifications, if at all, would be introduced. The result of

their deliberations of the solution of the problems submitted to them found a valuable addition to the fundamental provisions of law.[40]

The establishment of *Qiyās* or the concept of analogical reasoning as the fourth source of law had a difference of opinion among the Companions of the Prophet regarding the exact version in original sources. The reason may be said to lie in the interpretation of the fundamental sources or in the method of the use of *Qiyās*.[41]

The main objective of the Muslim State of the second period was to strengthen and expand the faith firmly rooted on the framework provided by the Prophet. The Companions of the Prophet, especially at the initiative and action of Caliph Abu Bakr through'Umar, collected the Qur'an. They also checked the narration of the traditions for genuineness and left scope for further legal development of the law as contained in the *Sharī'ah* evidences. The foundation of the principles of State administration, through the conception of Ummah, led the Khulafa' Rashidin to introduce many institutions beneficial to the welfare of the community. The principles adopted by them, the departments of the government and the system of sociological programmes intiated and operated by leaders of the State offer a model for the future generations. The system of administration took a definite shape and further consideration was given to introduce legal institutions in keeping with the changing times. The majesty of the law worked in every branch of life at the time, and upon the basis furnished, further elaboration and progress were maintained by the next period.[42]

iii. Third stage: The dynastic-cum-representative period

This period started with the foundation of the Umayyad Dynasty by Amir Mu'awiyah in 41A.H. and lasted till the weaking of Arab control at the beginning of the second century of the Muslim era.

During this time, the narration of traditions became common. People from different cities came to the Companions of the Prophet seeking solutions to new problems arising on account of change in circumstances and conditions. The successors of the Companions of the Prophet also expressed their opinions on such problems basing them on a tradition and, under this method, the narration of traditions increased. Moreover, the people learned in Islam spread to different Muslim cities or towns for the purpose of education on or teaching of the Qur'an

and traditions. There arose a number of persons from among the ranks of the Companions, their successors, etc., who also issued legal opinions.[43]

At this period, distinction began to be made in the rules of *Fiqh* by *'Ilm* and *Usul*, which were later, developed by the jurists of the succeeding period as distinct schools of thinking. This was given rise to by the difference of *Hadith* and *Ra'y* or personal reasoning (ordinarily known as *Qiyās*). The Companoions and their successors, in the absence of any basis in the Qur'an and traditions, issued opinions on individual reasoning. There were other persons who limited their opinions rigidly within the tradition.[44]

It is pertinent to also note that during this period, the non-Arabs had an important role to play in the process of development of the law. They learnt the *Sharī'ah* principles and its evidences and opened centres of learning and education in various towns and cities. In their capacities, they were never inferior to the Arabs and it is true that their contribution to the development of the law was greater than that of the Arabs. It was all due to the expansion of Islam in different lands. The methods of legal development through the techniques of *Istihsan*, *Istislah*, etc., came to be at a formative stage to be specially magnified by the succeeding period.[44]

iv. Fourth stage: The scientific research period

The formative era of the development of settled principles in law grounded in the third period received firm foundation of scientific researches by the advent of the fourth stage, in the Islamic legal history. This period started from the beginning of the second century of Hijrah and lasted till the middle of the fourth century.

This fourth stage in the legal history was a period of extensive expansion of the civilisation of the Muslims and of the development of systematic knowledge with exact expertised work in the *Sharī'ah* institutions. The institutions at that time began to create a deep historical imprint the world over, by expansive implements of morality, science, sulture, tolerance and law. Trade increased extensively with the growing civilisation and business institutions and centres of trade and commerce gave rise to new circumstances which needed and expansive rule of conduct. With expansion of industry, agriculture, trade and commerce, operation of

the law grew wider. To meet the meeds, there took place intensive legal developments, inside and outside the structure provided by the *Sharī'ah*.[45]

Memorisation of the Qur'an became very popular and it took a form of learning, which dispersed throughout the length and breadth of the Muslim lands. The period under review was best suited for the development of the science of traditions. There was the necessity of compiling the *ahadith* by editing them in a systematic manner. [46] Systematisation and fixation of *Usul* and the rise of schools also took place at this period. The basic value of the traditions of the Prophet was a fundamental principle of *Fiqh* in the earlier periods. The *Muftis* used to search a basis in the absence of Qur'anic authority to issue opinions in law.[47]

It was during the period that the method of giving *Qiyās* an important place in *Fiqh* took a vital role with complete success. The Hanafi school took a leading part in it, followed by the Maliki and Hanbali schools, and Shafi'i school came into the middleo of the views of the Hanafi and the other two schools.[48]

v. Fifth stage: The research fixation period

During the fourth period of immense scientific researches in law were established the schools of jurisprudence in accordance with need of time and place. The advent of the fifth period led to their fixation amidst the changing political authority for the stability of and permanence in the sciences of law. It started from the middle (or even from the beginning) of the fourth century Hijrah and remained in operations till the downfall of the Abbasids at hands of the Mongols in the middle of the seventh century Hijrah and ultimate rise of the Ottoman Turks.

At this period, there arose individual sovereignties in the Muslim lands. In the light of the political conditions of the time, it was necessary to give stability to the original principles of law and jurisprudence as developed earlier. The jurists gave finishing touches to the bases provided by schools and polished individual principles and rules of their leaders. In other words, during the period, the scientific researches of the founders of the schools in the fourth period took definte shape and there arose a rich treasure of learning and legal literature to become amost valuable patrimony for the future generations.[50]

The fifth period developed a spirit of following and history records that the process of administration of justice and the method of appointment of judges to enforce law demanded a set of people well versed and well coversant with certain

and acknowledged rules and bases of the schools of the *Sharī'ah* law. For the implementation of this policy, the authorities patronised either of the schools and made a particular school as the State school. They appointed *Qadis* and *Muftis* who belonged to the patronised school with public or private confidence.[51]

vi. Sixth stage: The transcription period

The fifth stage in the legal history of Islam ended with the fall of the Abbasids at Baghdad at the hands of Hulagu b. Tuli b. Dushi Khan in 656 A.H. (1258 C.E.) and gave place to the new period. The sixth stage in the history of law started by the foundation of the Turkish Empire by the Ottoman Turks by 1288 C.E. and also by the permanent Muslim conquest of India at the hands of Muhammad b. Ghuri from 1192 C.E. onwards. This period of non-Arab Muslims remained in operation till the beginning of the Tanzimat movement from 1839, Gulhane Charter by the Ottomans (or even earlier) and in India from the establishment of British control after the failure of the Muslim stuggle to regain power in 1857.[51]

In accordance with the requirements of the time, during the rule of the non-Arab Muslims, the continuation of the *Sharī'ah* law and jurisprudence was one of the guiding features. To give religion further expansion and firmness in foreign lands, the sixth stage of law gave out a more complete picture of transmission of the earlier researches of the schools. The exemplary spirit initiated in the fifth period was transcribed in the sixth period. It is said that and attempt towards *Ijtihād* was made in the first half, or even earlier, of this period. It may be submitted that it never reached a high standard, for the jurists never surpassed the limits laid down by the learned of the earlier periods.[52]

vii. Seventh stage: The free will period

The sixth period in the legal history of Islam touching the meridian of development ended giving place to the seventh period of free law movement. The beginning of the decline in the *Sharī'ah* law started with the expansion of European colonialism or political expansion and mental transplantation earlier. Its impact may be dated from the Gulhane Charter of 1839 in case of Ottoman and the unsuccessful 1857 Muslim uprising in the case of the Indian subcontinent. The free

law movement gained momentum with the imposition of alien legal systems in the Muslim lands colonised by the European powers. [53]

During and after the two world wars, in an atmosphere of foreign laws, the newly independent Muslim countries, patented with the European conceptions of nationalism and territorial principles, carried forward or followed the Western laws in large areas of human relations. The movement of free law contines to expand and the *Sharī'ah* law is moulded to be localised in territorial boundaries of individual countries. The threat to existence through capitalism and communism culminating into the Israeli aggression to religion hovers over the Muslims and there is a practical dichotomy in the Muslims' life in books and the law in action. In short, the seventh stage in the history of the institutions of the *Sharī'ah* continues to operate with a severe degree of ravity and peril, perhaps first of its kind in the whole history of Islam [54]

The cataclysmic inundation of the Western thought upon the Islamic countries greatly dazed the latter. As a result of direct contact with Western civilisation, following upon colonisation, political intrigue and dominance, when European conceptions of democratic freedom, national sovereignty and materialism, based upon the application of science and industry, or technology, liberalism in education, sexual equality, monogamy, and many other things, impregnated the East, it had a deep, effective result.[55]

In colonies or in areas under European influence, the territorial law was Europeanised and the law applicable to persons not subject to that law was termed personal status law or *status reel*. It was borrowed from the Continental codes where, under the impact of the Canon law on the Roman law, the State began to regulate the religious aspects of the people by legislation and termed it as the law of persons or private laws. They were related to family affairs: marriage, divorce, inheritance, guardianship, wills, succession, gift and *waqf*, etc. Fearing that religious susceptibilities of the people may not be offended, the colonialists left them largely intact by terming them as personal status according to the laws of Islam.[56]

1.3. THE SOURCES OF *SHARĪ'AH*

There are four major sources of *Sharī'ah*: the Qur'an, the *Sunnah* or *Hadith*, *Ijmā'*and *Qiyās*. Apart from these, many jusrists have also included those

that can be described as supplementary or subsidiary sources if not repugnant to the principle of *Sharī'ah*. Among these are: *Istihsān*, *Istislāh*, *Istidlāl* and *'Urf*. They are therefore examined briefy here.

1.3.1 The Qur'an

The original or chief source from which all principles and ordinances of *Sharī'ah* are drawn is the Glorious Book called al-Qur'an. It contains the revelations of Allah to Prophet Muhammad (S.A.W) through angel Jibril for the guidance of mankind. It is the final authority for both religion and the laws governing all Muslims in their individual and social behaviours.[57] It provides a code of conduct for every believer and is the commandment (*Amr*) and warrant (*tadhkirah*) for him. Its injunctions are manifest (*mubin*), sublime (*'āli*) and blessed (Mubārak).[58]

The Qur'an contains maxims, principles, and indications, general or fundamental methods of approach toward human conduct in general. It has a place as of a constitution or a fundamental code of law. The basic principles of law in Islam are derived from these fundamental outlines of the Qur'an.[59]

The Qur'an is divided into 114 chapters, each chapter composed of a different number of verses, The Qur'an deals with extensively different subject matter. Although it covers certain fundamental legal rules, it does not concern itself with all diversified and detailed requirement of the law. According to Amin, only about 80 verses are concerned with law. Inevitably, therefore, resort to other sources of law has to be made to complement the Qur'anic legal rules.[60]

1.3.2 The *Sunnah* or *Hadith*

The second chief or primary source of the *Sharī'ah* is the *Sunnah* or *Hadith*. The word *Sunnah* literally means way, custom, habit of life, and, technically, it is defined by the jurists as the utterances of the Prophet (other than the Qur'an) known as *ahadith*, or his personal acts and acts and saying of others tacitly approved by him. *Sunnah* has another technical meaning in reference to religious duties, namely, that which is recommended, although not obligatory, according to the classification of *Sharī'ah*.[61]

The term "*Hadith*" covers not only the sayings of the Prophet, but also his actions as well as what he tolerated among his companions. By toleration we mean

the seeing by the Prophet of a thing being done by a companion of his and keeping silent over the deed or even explicitly approving it. The two words *Hadith* and *Sunnah* either of which might, with some justification, be translated "tradition" though used commonly, differ in their significance. *Hadith* really means a report representing an account of what happened, whereas *Sunnah* means the practice or custom. In short, the *Sunnah* is what was practised and the *Hadith* is the record of what was practised. Since *Sunnah* means the practices and precepts of the Holy Prophet and *Hadith* tells what the *Sunnah* was, the latter enshrines the *Sunnah*.[62]

The importance of *Sunnah* as a second source after the Qur'an is borne out of the fact that the details are provided by the *Sunnah* of the Prophet on some issues which the Qur'an does not give details. His sayings or doings, his approbations or disapprobatios guide the particular issue. More so, the Qur'an says: "And whatever the Apostle gives to you, take and what he forbids you desist from…"[63] Similarly, at another place, the Qur'an declares:

> O ye who believe, obey Allah and obey the Messenger and
> Those of you who are in authority. And if you differ in
> Anything amongst yourselves, refer it to Allah and His
> Messenger if you believe in Allah and in the Last Day.
> That is better and more suitable for final determination.[64]

In view of above, the traditions of the Prophet possess a place second to the Qur'an as an independent source of law under the Qur'anic principles.[65]

1.3.3. ***Ijmā'***

Consensus of opinon of the scholars known as *Ijmā'* is regarded by the jurists as the third main source of the *Sharī'ah*. It is defined as "the consensus of the Muslim jurists of any particular period, concerning a *Sharī'ah* value.[66] Doi defines it as "consensus of opinion of the companions of the Prophet (sahabah) and the agreement reached on the decisions taken by the learned "*Muftis*" or the jurists on various Islamic matters."[67]

Without being fixed by council or synod, *Ijmā'* is reached instinctively and automatically. Its existence on any point is perceived only by looking back and seeing that the agreement has actually been reached to be consciously accepted as *Ijmā'*. It becomes an essential part of faith and any disbelief in it is termed an act of unbelief. It is reached for the generality of human needs in accordance with the requirements of time and conditions by providing a process of exertion to adopt the

law to legal development as provided by the *Sharī'ah* bases. It is accomplished by those who are possessed of the necessary qualification as *Mujtahids* or lawyers of the sacred law in order to perfom *Ijtihad* as given by the *Sharī'ah* methods of legal thinking and analysis. It is a *de facto* agreement of the learned on the basis of universal practice of Islam.[68]

The *Sharī'ah* evidences continued in the Qur'an and the *Sunnah* have sufficient materials and scope for the justification of the doctrine of *Ijmā'* and for this reason, consensus of opinion is considered as the third source of Islamic laws and jurisprudence. It only needs an approach, learned, sincere and just, to adopt what is permitted and beneficial for human society and its need.[69]

1.3.4. ***Qiyās***

Qiyās is the fourth main source of *Sharī'ah*. In its dictionary sense, the word Qiyās means "to guess" or "to estimate," i.e. "measuring" or "comparing," and in the language of the law it signifies a process of deduction by which the law of a text is applied to cases which, though not covered by the language, are governed by the reason of the text. In other words, it is an extension of a *Sharī'ah* value from the original case or *'asl* which a prescription has been revealed to a new case, because the latter has the same case as the former.[70] The function of *Qiyās* is to discover the cause or *'Illah* of the revealed law so as to extend it to similar cases.[71]

This leads us to the definition of *Qiyās* "to extend (*ta'diyah*) of the *Sharī'ah* or *'asl* over to the subsidiary or *far',* by reason of an 'effective' case or *'Illah* which is common to both cases and cannot be understood from the expression concerning the original case alone." For example, if a certain act has been prohibited in the Qur'an or *Sunnah*, other acts common with that act in regard to the dffective cause for which the prohibition has been decreed, are likewise prohibited.[72]

In other words, *Qiyās* is the legal principle introduced in order to arrive at a logical conclusion of a certain law on a certain issue that has to do with the welfare of the Muslims. In exercising this however, it must be based on Qur'an, *Sunnah* and *Ijmā'*. [73] Based on the above, it is to be mentioned here that *Qiyās* has four components:

i. *'Asl* – the root to which analogy is made;

ii. *Far'* – the branch for which analogy is sought;

iii. *'Illa* – the reaon or the basis of which analogy is made and;

iv. *Hukm* – the judgment to which the analogy leads.[74]

1.3.5. ***Istihsān***

Apart from the four main sources, there are some supplementary or subsidiary sources as earlier mentioned. The foremost among them is *Istihsān* – favourable construction. It is advocated by the Hanafi School. According to the book on the science of law, technically it denotes the abandonment of the opinion to which reasoning by *Qiyās* would lead, in favour of different opinions supported by stronger evidence. Such a departure from analogy may be necessarily based on or supported by the *Sunnah* or *Ijmā'*, or it may be another type of analytical deduction hidden in nature.[75] However, the root meaning of *Istihsān* is "a desire for beauty" or symmetry for removal of discrepancies or inequities in law.[76]

While analogy is to protect *Sharī'ah* against the free use of reason, *Istihsān* stands for freedom in the use of one's own reason. *Istihsān* is the theory enunciated by Abu Hanifa who represents the school of the people of *ra'y* or opinion. *Istihsān* means preference.[77]

1.3.6. ***Istislah* or *Maslahah***

This is originally introduced by Imam Malik. *Istislah* is a name given to the methodology of the law contained in the *Maslahah.* According to necessities and needs of circumstances, it consists in prohibiting or permitting a thing simply because it serves a "useful purpose" or *Maslahah*. Though there is no express evidence in the revealed sources to support the action, it has been defined as the establishment of a legal principle or *Hukm*, which is recommended by reason of being advantageous.[78]

1.3.7 **Istishāb**

Istishāb relates to the deduction by presumption of continuity which may, at best, be a principle of evidence rather than the source of law. The literal meaning of *Istishāb* is 'the seeking for a link' i.e. some authority of proof.[79]

Istishāb or concordance was introduced by Imam Shafi‘. It is the concept of "the seeking for a link," according to which a practice once proved to be widespread may be presumed to be both traditional and continuing. It had a logical connection with Maliki *Istislah* and Hanafi *Istihsan*. Being a principle of evidence, its application is restricted to substantive law and is to be justified unless the contrary is proved.[80]

Literally, the term has a permanent connotation; technically, it denotes that things whose existence or non-existence had been proved in the past should be presumed to have still continued as such for lack of establishing any change. When the present is judged in the light of the past, it is *Istishāb al-hāl* otherwise; it is termed *Istishāb al-mādi* or past.[81]

1.3.8. **Istidlāl**

Istidlāl is expressive of the connection that exists between one proposition and another. For example, sale is contract and the basis of every contract is consent, therefore consent is the basis of sale.[82]

Istidlāl or deduction is the striving after a basis for a rule. The term connotes a special source of law derived from reason and logic, not from the textual side of the law. In this process, there are the deduction by *Istishāb* noted above and deduction by a logical process as by *Istidlāl*.[83]

In the ordinary sense, the term means an inference for a thing from another thing, but in the real sense, it is a form of ratiocination or legal reasoning not covered by *Qiyās*.[84]

1.3.9 ***‘Urf***

‘*Urf* or *‘Adah* is custom. According to its dictionary meaning, a custom conveys a sense "to know", while in the *fiqh* rules, it is a practice of the people. The customs prevailing at the time of the Prophet, which were not abrogated by the Qur'an and the *Sunnah,* amounted to recognition on the point of their validity. The practices and usages of the people springing up after the death of the Prophet were justified along with other essential conditions on the authority of the text laying down that, what else the people in general consider to be good is so in the eye of God.[85]

In view of the above, the custom or usage of the society concerned, both in word and deed, constitutes another supplementary source of law. The contemporary Islamic law, as applied in various parts of the Muslim world has been modified to various degrees in order to accommodate the indigenous customs and local tradition which are not inimical to the *Sharī'ah*.[86]

1.4. THE SIGNIFICANCE OF *SHARĪ'AH* TO THE MUSLIMS

As we have noted, *Sharī'ah* is a way of life of the Muslims. It is the embodiment of all aspects of their life, both spiritual and mundane. Therefore, Islam is *Sharī'ah* and vice-verse. This is because; Islam is not just a set of rituals but a complete way of life. To a Muslim, the *Sharī'ah* represents his entire life, symbolizes his existence, and gives him his identity. His entire personality and character are shaped by the *Sharī'ah*. It is on this basis that *Sayyed Hossein* Nasr notes that "only he who accepts the injunctions of the *Sharī'ah* as binding upon him is a Muslim….." He states further that:

> The *Sharī'ah* is the ideal pattern for the individual's life and the law which builds the Muslim people into a single community. It is the embodiment of the Divine Will in terms of specific teachings whose acceptance and application guarantees man a harmonious life in this world and felicity in the hereafter.[87]

The *Sharī'ah* contains the injunctions of the Divine Will as applied to every situation in life, declares Hossein Nasr. It is the law according to which God wants a Muslim to live. It is therefore the guide of human action and encompasses every facet of human life. By living according to the *Sharī'ah,* man places his whole existence in God's hand. The *Sharī'ah*, by considering every aspect of human action thus sanctifies the whole of life and gives a religious significance to what may appear as the most mundane of activities.[88]

Law in Islam, observes Hossein Nasr, is an integral aspect of the revelation and not an alien element. Therefore, it is a religious notion of law, one in which law is an integral aspect of religion. However, religion to a Muslim, according to him, is essentially the Divine Law which includes not only universal moral principles but details of how man should conduct his life and deal with his neighbour and with God; how he should eat, procreate and sleep; how he should

buy and sell at the market place; how he should pray and perform other acts of worship. It includes all aspects of human life and contains in its tenets the guide for a Muslim to conduct his life in harmony with the Divine Will.[89]

It is worthy of note that even non-Muslim scholars of Islamic law admit this empirical fact that *Sharī'ah* is a way of life of the Muslims. For example, *Joseph Shacht,* despite his prejudices against Islam, declares that "*Sharī'ah* is the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself".[38] Similarly, J.N.D. Anderson sees the *Sharī'ah* as "explicit and assured in its enunciation of the quality of life which God requires of man and woman".[90]

While analyzing further the significance of *Sharī'ah, Hossein Nasr* asserts that the *Sharī'ah* is for Islam, the means of integrating human society. It is the way by which man is able to give religious significance to his daily life and be able to integrate this life into a spiritual centre. He observes further that the *Sharī'ah* makes the act of earning one's daily bread a religious act, one which a Muslim should perform with the awareness that he is performing an act that is pleasing in the sight of God and is as obligatory as specifically religious duties. The *Sharī'ah* in fact gives a religious connotation to all acts that are necessary to human life, and of course not those which are simple luxurious. In this way, the whole of man's life and activities become religiously meaningful. Man by placing his life in the channels ordained by the *Sharī'ah* avoids many unseen catastrophes and assures himself a life of a wholeness and meaning.[91]

Giving his own words on the significance of *Sharī'ah*, *Ibrahim Sulaiman* observes that "*Sharī'ah* is an organic whole which accepts no division of life into private and public, secular and spiritual and so on. It seeks to regulate that life of people is a systematic, orderly and perfect manner so that neither contradiction nor confusion could creep into the life of the people".[92] To the Muslim, Sulaiman asserts further, "*Sharī'ah* is his guide to the attainment of happiness in this world and in the next. The *Sharī'ah*, and *Sharī'ah* alone, gives him ease, comfort, joy and happiness. His obedience to the *Sharī'ah* gives him a sense of fulfillment and dignity and serenity and internal peace which no other law can provide."[93]

The *Sharī'ah* is the root of Muslim life, without it he is not a Muslim. This is because obedience to the *Sharī'ah* is the only practical manifestation of the Muslim's declared belief in Allah, and in Muhammad (S.A.W). This obedience

symbolizes also his love for Allah and his love for Islam. It is for this reason that the only way a Muslim can show his sincerity in his belief in Allah and in Muhammad (S.A.W), is to struggle, where he is, for the supremacy of the *Sharī'ah*, to the point of sacrificing his dear life.[94]

It is clear from the foregoing that *Sharī'ah* is an integral part of belief of a Muslim without which one's Islam is incomplete. "Belief", it is said, "is the inner function of the mind and *Sharī'ah* is the external manifestation of it".[95] Therefore there is no gainsaying the fact that the entire life of the Muslims is shaped by the *Sharī'ah* and any move to destroy *Sharī'ah* is tantamount to destroying the life of the Muslims. It is incumbent on all Muslims to follow *Sharī'ah* intoto and allow themselves to be guided and be judged by it. This is why *Hassan Gwarzo* is quoted to have declared that "it is obligatory upon a Muslim to refer all his disputes to the *Sharī'ah*. He has no alternative whatsoever no matter whatever is the nature of dispute, be it civil or criminal; he has to be judged according to *Sharī'ah*".[96]

It is as a result of above that application of *Sharī'ah* by the Muslims wherever they may be is taken with all seriousness. As Ibrahim Sulaiman opines, "the test of Islamicity of any society is the extent of its application of the *Sharī'ah*. No amount of *Salāt*, *Zakāt*, *Sawm* or Hajj alone, can make a society truly Islamic, if the *Sharī'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 amounts to rejection of Islam".[97]

More importantly too, the Qur'an poses a very serious challenge to whoever refuses to judge by what Allah has revealed and makes clear its implications. These are declared as follows;

> Unbelievers they are who do not judge in accordance with Allah's revelation.[98]
> Transgressors they are, who do not judge in accordance with Allah's revelations. [99]
> Evil doers they are, who do not judge in accordance with Allah's revelations. [100]

From the foregoing, it is to be concluded that Allah has revealed the *Sharī'ah* to man so that through it he can reform himself and his society. The presence of the *Sharī'ah* in the world is due to the compassion of Allah for His creatures so that He has sent an all-encompassing law for them to follow and

thereby to gain felicity in both this world and the next. The *Sharī'ah* is thus the ideal for human society and the individual. It provides meaning for all human activities and integrates human life. It is the norm for the perfect social and human life and the necessary basis for all fights of the spirit from the periphery to the centre. To live according to the *Sharī'ah* is to live according to Divine Will, according to a norm, which Allah has willed for man.

1.5. FORMULATIONS OF THE THESIS

1.5.1. Motive and objective

Owing to our interest in the area of *Sharī'ah*, we discovered that researchers have not carried out indebt research into the application of *Sharī'ah* in the area known as Yorubaland of Nigeria. Those who have written something about it mentioned it in passing. It is as a result of this we decided to work on "The Institution of *Sharī'ah* in Oyo and Osun States, Nigeria, 1890 - 2005". Our intention is to make this as a basis for researching into the application of *Sharī'ah* in Yorubaland.

The reasons for focusing these two States in Yorubaland are not far fetched. Firstly, these two States are parts and parcels of the core Yorubaland and secondly there is no doubt in the fact that there are a large number of Muslims in these states who are highly committed to the course of Islam and Islamic norms and practices. The third point, which is very important, is the fact that most of the towns where application of *Sharī'ah* could be referred in Yorubaland fall under these States.

1.5.2. Significance of the study

Having mentioned that, the study is principally intended to examine the application of *Sharī'ah* in Yorubaland, it is hoped that the work will be of a great benefits to the Muslims in particular and the researchers on *Sharī'ah* in general. This is because there had been argument and counter argument as to whether *Sharī'ah* was at a particular time or the other applied in the area called Yorubaland or not. Moreso, it is believed that this study will be of a particular assistance to Muslims in the Southern part of the country who have in one time or the other demanded for the use of *Sharī'ah* in their area. Their demands were characterized by a number of problems, which this study seems to examine and proffer solutions. The study will therefore serve as an instrument for working out the modalities

through which these problems can be easily solved. It stands to serve as way through which the issue of *Sharī'ah* can be constitutionally handled.

The study serves as record keeping of the past with a view to projecting the future. Since the history of *Sharī'ah* application in this area has been traced in this study, it will help the Muslims in becoming more conversant with the treasures inherent in the proper practice of Islamic Legal System. The research work will expose the Muslims particularly those in Yorubaland of Nigeria to have more understanding of their responsibilities towards the application of *Sharī'ah*. The attitude of many Muslims to the application of *Sharī'ah* in this part of the country is not impressive hence this study could serve as a means through which this would be corrected.

The non-Muslims too can benefit from this study. It serves as means through which non-Muslims can be educated and enlightened about *Sharī'ah*. It is the availability of a well researched work that can create an avenue for interest in wanting to know more about something. Where there is nothing to be consulted for any enquiry, there can be no deservable answer. It is therefore hoped that this study would be of great benefit for the non-Muslims who want to search for the truth about *Sharī'ah* in Oyo and Osun States in particular and Yorubaland.in general.

The work will also be useful for researchers who may like to work on a topic that is related to this or may want to make further research on this topic in future. It will equally assist those in the area of Law either in the teaching field or in the Legal Profession to be conversant with the history of *Sharī'ah* in this part of the country. It is therefore hoped that this work will not only be beneficial to the Muslims, but also to academic scholars and students, researchers, legal practitioners and luminaries as well as judicial administrators and personnels.

1.5.3. **Scope of the study**

The title of this work is not enough to expressly inform us about the scope of the study. It would be necessary to discuss what its scope looks like. The work focuses on the institution of *Sharī'ah* in Oyo and Osun States of Yorubaland leaving out other Yoruba speaking States like Lagos, Ogun, Ondo Ekiti and some parts in Kwara. However, reference may be made to any of these places when situation demands. Institution means an established system or custom in society.

The institution of *Sharī'ah* is used here to connote the application of an established system of law of the Muslims.

The range of the date is chosen owing to the fact that it was in the 1890s that Islam was reported to have gained ground in the entire Yorubaland and the general pattern of life of the Muslim community was conducted in conformity with the *Sharī'ah*.[101] There were however various developments on *Sharī'ah* between that time and 1999 when Zamfara state launched *Sharī'ah*. This development re-opened agitations not only in the North but also in Yorubaland leading to the launching of Independent *Sharī'ah* Arbitration Panel in Oyo State in the year 2002. Moreover 2005 was the year when Osun State Muslim Community concluded arrangements to also launch Independent *Sharī'ah* Panel; hence, the year was made the end point of the research.

That not withstanding, the study appraises the period before the arrival of the British Colonialists, the Colonial Era and the contemporary period upto 2005. This is because our focus of attention is essentially on the ways, methods, extent and how the *Sharī'ah* was applied in the area of study during those periods. This gives us the account of *Sharī'ah* practice among the Yoruba Muslims since the emergence of Islam in this area upto the contemporary period.

The work looks at the historical background of the two States under study in the areas of creation, culture, people and structure. It examines the advent of Islam and *Sharī'ah* before discussing its application in the places. It also appraises the procedure, scope and methods adopted in its application. The appraisal of the scope is made with a view to examing whether the *Sharī'ah* application in our area of study was a full blown one or was limited to Islamic law of personal status (*ahwal ash-shakhsiyyah*). It then concludes by looking at the problems faced at different periods as they affect Muslims of the area of study in their judicial matters.

1.5.4. **Methodology and approach**

This research work is historical in nature. It involves evaluation of events in the past as a way of predicting the future. It studies various issues related to *Sharī'ah* in these areas of Yorubaland in the past, relates it to the present and predicts what its position will be in the future. It also suggests solution to the societal problems.

The research information was based on primary and secondary sources. The primary source includes the interview of the people who were directly or indirectly involved in the application of *Sharī'ah* in those days. The secondary source however includes academic books and journals.

Also in the course of data collection, field work was undertaken. Both formal and informal interviews were used to extract information. This method was adopted to acquire pieces of relevant information directly from the respondents. Those personalities interviewed included chief Imams, Islamic Scholars, some selected Muslim and Chritian leaders in both state, as well as legal practitioners who have interest in *Sharī'ah*. Others included officers of Islamic bodies or organisations who are advocates of the *Sharī'ah*, and members of the Houses of Assembly of Oyo and Osun States. English and Yoruba Languages were used for the interviews depending on the choice of the informant or the personality involved. The selected informants placed at our disposal useful and relevant information that had, in no small measure, contributed to this work.

Methods adopted in the research work were both analytical and descriptive. Available relevant materials, documents and facts to this study were collected and analysed; while the research made it possible for some aspects of the work to be adequately described, scheduled interviews were held while questionnaire of various designs distributed to people in the grassroot were administered. This afforded the researcher the opportunity of gathering information, opinions, facts and viewpoints on this work. Some print-media houses were also consulted while some Arabic manuscripts, official minutes and record of files as well as memoranda of various types were perused. However, formal interviews conducted somehow limited the scope of the informants to questions posed by the researcher while the informal interviews sometimes made available information not necessarily relevant to the study. Thus, the onus of selecting relevant sections of such submissions rests exclusively on the researcher.

Summarily therefore, for the purpose of this study, the researcher discussed with informants, administered questionnaires, consulted printed and archival materials and collected useful materials. All this brought about the success achieved on this study.

1.5.5. **Review of related literature**

There is no gain-saying the fact that there are a number of existing literature and research works on *Sharī'ah* from different perspectives. Its application in Nigeria in particular and some other parts of the world had received the attention of eminent scholars both Muslims and orientalists. Textbooks, articles and journals have been written and published by such eminent scholars on *Sharī'ah* and its application.

In spite of all these available materials, not many works treat the *Sharī'ah* and its application among the Yoruba of Nigeria, particularly our area of study in details. As far as, our research could carry us, we have discovered that there is still a vacuum in this area because there is no existing work that treats exclusively the *Sharī'ah* and its application in Oyo and Osun States of Yorubaland in Nigeria.

As already mentioned, some works had been carried out that touch the issue of *Sharī'ah* in Nigeria. There are some other ones that discuss other issues of *Sharī'ah* among the Muslims in Yorubaland or treat its application in this area in passing. But specific and detailed discussion had not been done on *Sharī'ah* and its application in Yorubaland particularly in these two states. As a result, this study has endeavoured to look at this area. Although, details of the *Sharī'ah* and its application in Oyo and Osun states which is the focus of this study could not be treated in isolation of other related literature.

Some of the related literature and research works reviewed in relation to this study are mentioned here. The first to be mentioned is *Islamic Law in Nigeria (Application and Teaching)* edited by S. K. Rashid.[102] The book discusses the application and teaching of Islamic Law (*Sharī'ah*) in Nigeria but Yorubaland was conspicuously left out. The book seems to concentrate on *Sharī'ah* application in the Northern part of Nigeria with the belief that it was not applied in any other part of the country. This is so, based on the assertion of Kumo in the same book who states that "so far as this country is concerned, Islamic Law (*Sharī'ah*) applies only in Northern Nigeria and nowhere else."[103]

Contrary to the above, M. A. Ambali's *The Practice of Muslim Family Law in Nigeria*[104] admits the application of *Sharī'ah* in Yorubaland. Although the book focuses the issues of Muslim family Law in Nigeria, it briefly discusses the practice of *Sharī'ah* among the Muslims of the South, particularly Yorubaland.

The "*Sharī'ah* Legal Practice in Nigeria, 1956 – 1983" by *M. A. Ajetunmobi*[105] is a research work which discusses the position of *Sharī'ah* in Nigeria before and at the advent of Colonial Government. It examines the dispensation of justice with the *Sharī'ah* in Nigeria and the subjugation of the *Sharī'ah* practice particularly in the then Southern protectorate. It mentions the application of *Sharī'ah* in Yorubaland but not in details since its attention is not on Yorubaland.

The research work of A. A. Sheikh titled "A study of the *Sharī'ah* and its application in Nupeland (1832 – 1960)"[106] examines the *Sharī'ah* application in this area. It discusses how Muslims in this area apply *Sharī'ah* on matters affecting them with a particular reference to personal or matrimonial matters. The work cannot however be criticized for not mentioning Yorubaland since its scope of study is limited to Nupeland.

D. O. S. Noibi briefly mentions application of *Sharī'ah* in Yorubaland in his book – *Islamic Perspective (A comprehensive Message)*[107] while discussing the need for the *Sharī'ah* in Yorubaland. He observes that in parts of pre-colonial Yorubaland, justice was dispensed according to *Sharī'ah*. It is further asserted that although the British contrives and abolished the *Sharī'ah* in Yorubaland, Muslims in some parts of this area did call for the resuscitation of the Law for the purpose of adjudication among the Muslims.[108] The work however seems to concentrate on the need for the *Sharī'ah* in Yorubaland rather than discussing *Sharī'ah* in this area in details. It then affords us the opportunity of probing further into how *Sharī'ah* was applied in this area.

"Interaction between Islamic Law and Customary Laws of Succession among the Yoruba"[109] by *M. A. Okunola* tries to examine the interaction between the two Laws (Islamic and Yoruba customary laws). Although the research work concentrates on Law of succession, it discusses in brief the application of *Sharī'ah* in some parts of Yorubaland. It then serves as useful information for this study.

The research work of *H. A. Abdul-Salam* is titled "Matrimonial Issues among Yoruba Muslims of Nigeria."[110] The work examines matrimonial issues among the Yoruba Muslims of Nigeria. It assesses the effects of Islamic culture and tradition on the Muslims of this area on matters relating to their matrimonial issues.

U. Y. Abdullah's Sharī'ah in Africa[111] is another work that discusses *Sharī'ah* in Africa with a particular reference to Nigeria. It examines *Sharī'ah* practice in the Southern States of Nigeria particularly Yorubaland. It states in brief the application of *Sharī'ah* Legal system in Yorubaland mentioning the towns where it was applied. Although the information is not detailed, it affords us the opportunity of getting information about this study.

The literature so far reviewed provides us with relevant information and facts about the experiences of the application of *Sharī'ah* in Nigeria before, during and after the colonial era up to the contemporary period. Some literature also provide us relevant information about *Sharī'ah* application in Yorubaland, which serve as useful documents for the purpose of this study.

As earlier mentioned, the literature reviewed did not deal exclusively with *Sharī'ah* application in Yorubaland particularly this area of study. They only discussed it in brief or mentioned it in passing. It becomes necessary to feel this vacuum and this is what this study has tried to do.

1.5.6. **Problems and limitations**

In the process of collecting information for this study, some problems were encountered. First and foremost, it was discovered that records of *Sharī'ah* proceedings in our areas of study were not properly kept. As much as there were available evidences that *Sharī'ah* courts were established in those areas, hardly can records of the proceedings of the courts be made available. Where they were made available, they seemed to be obsolete and difficult to read as a result of their inability to properly preserve them for future use. Some who claimed to have records of the proceedings could not trace their where about as a result of misplacement or failure to attach importance to record keeping. This notwithstanding, the few that were made available were studied.

Secondly, many of the eyewitnesses who could supply information on *Sharī'ah* application in those days have died. Although there were a few who supplied information, they were either very young then or got the information from their fathers. Therefore, some of the pieces of information were second-hand ones.

The attitude and response of some of the informants or people interviewed were not encouraging. This revealed to us a kind of mistrust, fear or lack of confidence in us and they seemed to be biased in their information supply. Some

did not give their maximum co-operation while some did after a lot of persuasion and pleas. This might be as a result of their lack of familiarity with research work or due to their ignorance as to the value and significance of supplying information for record purposes.

It is observed that some Muslims interviewed were hypocritical in their opinions. They seemed to be sceptical in giving their opinions on re-establishment of *Sharī'ah* courts in the Southern part of Nigeria. Although they hypocritically supported its re-establishment, it seemed they cherished and preferred the Western system but pretended to us.

That not withstanding, we should remark here that we enjoyed maximum co-operation and support of many other people as well as that of many corporate bodies, organizations and establishments, which we contacted for opinions and to which our questionnaires were administered.

However, this study contains six chapters, including this introductory one. It then discusses historical account of *Sharī'ah* in Oyo and Osun states in Chapter two after which it examines in the subsequent two chapters, application of *Sharī'ah* and its procedure and scope in the two states respectively. Chapter five looks at the problems and prospects of *Sharī'ah* application in the two states while the concluding chapter recapitulates earlier findings and makes some recommendations and suggestions.

NOTES AND REFERENCES TO CHAPTER ONE

1. Ibn Manzur, n. d. *Lisanul-'Arab.* Lebanon: Dar Sader Publishers. p.175.
2. Cowan J. M., 1960. *A dictionary of modern written Arabic.* India: Modern Language Services. p. 465.
3. Ibn Manzur, 175.
4. Rashid, S. K. (ed.), 1986. *Islamic law in Nigeria: application and teaching*. Lagos: Islamic Publication Bureau. p.109.
5. Houstsma, M. TH. & Co., 1934. *The encyclopaedia of Islam*. London: E. J. Brill Ltd. Publishers & Printers. p.320.
6. The University of Chicago, 1981. *The new encyclopaedia britannica.* Chicago: Helen Hemingway Publisher. 9. p.938.
7. Eliade, M., 1995. *The encyclopaedia of religion.* New York: Simon and Schaster Macmillan. 8. p.431.
8. Qur'an 45 Verse 18.
9. Seriki, I. A. A. 1981. *Sharī'ah* provisions in the 1963 and 1979 constitutions of Nigeria: a comparative study. M.A. Project, Dept. of Arabic and Islamic, University of Ibadan. pp. 2 - 3.
10. The University of Chicago. p.938.
11. *Ibid*. p.938.
12. Ajetunmobi, M. A. 1988. *Sharī'ah* legal practice in Nigeria: 1956 – 1983, Ph.D. Thesis. Dept. of Religious Studies. University of Ilorin. p.2.
13. *Ibid.* p.3.
14. Maudidi, S. A., 1986. *The Islamic law and constitution*. Delhi: TAJ Company. p.50.
15. Qur'an 3 Verse 110.
16. Osho, S. 1999.Who is afraid of *Sharī'ah, Nigerian Tribune,* November 5.
17. Noibi, D. O. S. 1987, Islamic criminal law revisited, a Faculty lecture delivered at the Faculty of Arts, University of Ibadan, Ibadan, on 24th June.
18. Osho, *op.cit.*
19. Ajetunmobi, *op.cit.* pp. 4 – 5.
20. *Ibid.* p.5.
21. *Ibid.* p.*6.*

22. Schacht, J. 1964. *An introduction to Islamic law.* London: Oxford University Press. p. 84.
23. Schacht**,** J. 1950. *The origins of Muhammadan jurisprudence.* London: Oxford University Press. p.133.
24. Ajetunmobi, *op.cit.* p.7.
25. Husaini**,** S. A. Q., 1954. *The constitution of Arab empire,* Lahore: SH. Muhammad Ashraf. p.11.
26. Schacht, 1964. *op.cit.* p.24. .
27. *Ibid.* p.26.
28. *Ibid*. p.50.
29. Hitti, P. K. 1970. *History of the Arabs*. London: Macmillan Publishers Ltd. p.326.
30. Ajetunmobi, *op.cit.* p.7.
31. Husaini, *op.cit.* p.117.
32. Ajetunmobi, *op.cit.* p.8.
33. Hitti, *op.cit.* p.326.
34. Nasr, S. H., 1979. *Ideals and realities of Islam*. London: George Allen and Unwin Publishers Ltd. p.93.
35. Qadr, A.A. 1963. *Islamic jurisprudence in the modern world*. India: Aligarh, University Press. p.43
36. *Ibid*. p.43
37. *Ibid*. p.46
38. *Ibid*. p.50
39. *Ibid*. pp.50-51
40. *Ibid*. p.51
41. *Ibid*. p.53
42. *Ibid*. p.55
43. *Ibid*. p.56
44. *Ibid*. p.58
45. *Ibid*. p.60
46. *Ibid*. pp.60-61
47. *Ibid*. p.62
48. *Ibid*. p.64
49. *Ibid*. p.67

50. *Ibid*. p.68
51. *Ibid*. p.68
52. *Ibid*. p.72
53. *Ibid*. p.77
54. *Ibid*. pp.77-78
55. *Ibid*. p.82
56. *Ibid*. p.84
57. Ambali, M. A. 1998. *The practice of Muslim family law in Nigeria.* Zaria: Tamaza Publishing Company Ltd. p.4
58. Doi, A.R.I. 1984. *Sharī'ah*, *the Islamic law.* London: Ta-Ha Publishers. p.21
59. Qadr, *op.cit.* p.188
60. Amin, S.H. 1985.*Islamic law in the contemporary world: introduction, glossary and bibliography.* Glasgow: Royston Limited. p.9
61. Qadr, *op.cit.* pp.189-190
62. *Ibid*. p.190
63. Qur'an 59 verse 7
64. *Ibid*. 4 verse 59
65. Qadr, *op.cit.* p.189
66. *Ibid*. p.199
67. Doi, *op.cit.* p.64
68. Qadr, *op.cit.* pp.199-200
69. *Ibid*. p.207
70. *Ibid*. p.211
71. Muslehuddin, M. 1988. *Philosophy of Islamic law and the orientalists.* London: TAJ company. p.135
72. Qadr, *op.cit.* p.211
73. Doi, *op.cit.* p.70
74. Ambali, *op.cit.* p.11
75. Qadr, *op.cit.* p.222
76. *Ibid*. p.223
77. Muslehuddin, *op.cit.* p.150
78. Qadr, *op.cit.* p.224
79. Muslehuddin, *op.cit.* p.148

80. Qadr, *op.cit.* p.226
81. *Ibid*. p.226
82. Muslehuddin, *op.cit.* p.148
83. Qadr, *op.cit.* pp.226-227
84. *Ibid*. p.227
85. *Ibid*. p.227
86. Amin, *op.cit.* p.14
87. *Ibid*. p.94.
88. *Ibid,* 95 - 96.
89. Schacht, 1964. *op.cit.* p.1.
90. Anderson, J. N. D. 1969. The Legal Tradition, J. Kritzeck and W. H. Lewis. Ed. *Islam in Africa*. New York. p.35.
91. Nasr, *op.cit*. pp.97 - 98.
92. Sulaiman, I. K. R, 1986. The *Sharī'ah* and the 1979 Constitution. S. K. Rashid.Ed. *Islamic Law in Nigeria: application and teaching.* p55.
93. *Ibid*. p.57.
94. *Ibid*.
95. Seriki, *op.cit.* p.5.
96. *Ibid*. p.6.
97. Sulaiman, *op.cit.* p.56.
98. Qur'an 5 Verse 44.
99. *Ibid* Verse 45.
100. *Ibid* Verse 47.
101 Ajetunmobi, *op.cit.* p.47
102. Rashid, S.K. Ed.1986. *op.cit.*
103. Kumo, S. 1986.The application of Islamic law in Northern Nigeria: problems and prospects. S. K. Rashid. Ed. *Ibid*. p.43.
104. Ambali, M. A. 1998. *The practice of Muslim family law in Nigeria.* Zaria: Tamaza Publishing Company Ltd.
105. Ajetunmobi, *op.cit.*
106. Sheikh, A. A. 1996. A study of the *Sharī'ah* and its application in Nupe Land (1832 –1960). Ph.D. Thesis. Dept. of Arabic and Islamic Studies. University of Ibadan.

107. Noibi, D. O. S. 1988. *Islamic perspective: a comprehensive message.* Ijebu-Ode: Shebiotimo Publication.

108. *Ibid*. p.52.

109. Okunola, M. A. 1984. Interaction between Islamic law and customary laws of succession among the Yoruba. Ph.D.Thesis. Law Dept. University of Lagos.

110. Abdul Salam, H.A. 1996. Matrimonial issues among Yoruba Muslims in Nigeria. Ph.D. Thesis. Dept. of Religions. University of Ilorin.

111. Abdullah, U. Y. 1998. *Sharia in Africa*. Ijebu-Ode: Shebiotimo Publications.

CHAPTER TWO

HISTORICAL ACCOUNT OF *SHARĪ'AH* IN OYO AND OSUN STATES

2.1. HISTORICAL BACKGROUND OF OYO AND OSUN STATES

2.1.1. Creation, structure, people and culture of Oyo State

The entity known today as Oyo State is one of the component units of the Federal Republic of Nigeria. Before the creation of States in 1976, which brought about the 19 States structure in Nigeria, Oyo State was part of a larger entity, Western State, earlier created in 1967. Earlier still, Oyo State used to be part of the Western Region, which was largely the same in geographical area as Western State.[1]

Oyo State remained largely under the defunct Western Region and Western State until February 1976, when Nigeria was constituted into 19 States, the then Western State was broken down to three viz: Oyo, Ondo and Ogun States. Oyo State was the biggest (in terms of population and area) of the three and comprised the erstwhile Oyo, Ibadan, Osun, Ife and Ilesa provinces.[2]

The present area known as Oyo State came into being in 1991 when on Tuesday, 27th August of the year; Osun State was carved out of the former Oyo State. The state therefore, now covers a total of 27,249 square Kilometers of land mass and it is bounded in the South by Ogun State, in the North by Kwara State. To the West, it is bounded partly by Ogun State and partly by the Republic of Benin while in the East, it is bounded by Osun State.[3]

The new Oyo State retains the political headquarters of the Old Oyo Empire, as well as the seat of Colonial and Post-Colonial Western Region. Ibadan, the present capital was of post independent Western Region, Western State and former Oyo State. The name 'Oyo' is derived from the defunct Oyo Empire hooked on long historical antecedents. The people of Oyo State share a lot with the other Yoruba groups in the country. Thus while the State is a new creation, her people, with a known past, have a well developed political and administrative structure and an articulate group of educated and enlightened Nigerians.[4]

Oyo State consists of 33 Local Government Areas.[5] The Local Government Areas and their headquarters are:

LOCAL GOVERNMENT AREAS	HEADQUARTERS
Afijio	Jobele
Akinyele	Moniya
Atiba	Offa-Meta
Atisbo	Tede
Egbeda	Egbeda
Ibadan North	Bodija
Ibadan North-East	Iwo Road
Ibadan North-West	Onireke
Ibadan South-East	Mapo
Ibadan South-West	Oluyole Estate
Ibarapa Central	Igbo-Ora
Ibarapa East	Eruwa
Ibarapa North	Ayete
Iddo	Iddo
Irepo	Kisi
Iseyin	Iseyin
Itesiwaju	Otu
Iwajowa	Iwere-Ile
Kajola	Okeho
Lagelu	Iyana – Offa
Ogbomoso North	Kinnira
Ogbomoso South	Arowomole
Ogo-Oluwa	Ajaawa
Oluyole	Idi-Ayunre
Ona-Ara	Akanran
Oorelope	Igboho
Ooriire	Ikoyi-Ile
Olorunsogo	Igbeti
Oyo East	Kosobo
Oyo West	Ojongbodu
Saki East	Ago-Amodu
Saki West	Saki
Surulere	Iresaadu

Oyo State is relatively homogeneous socio-cultural state occupied by Yoruba speaking people. Like all other Yoruba, they claim descent from Oduduwa which implies that they originated from Ile-Ife. They are rich in culture and believe in strong kinship ties as a means of holding the society together. This is revealed in the extended family system. This notwithstanding, there is a substantial number of people from other parts of the country who settle, live and trade in the State, mostly in urban centres. Non-Nigerians from different parts of the world can also be identified in the State.[6]

The State can be sub-divided into four major sub-ethnic/cultural groups, each having its peculiar Yoruba dialect. These are the Ibadan, Ibarapa, Oyo and Oke-Ogun. Living among this main sub-ethnical/cultural groups are others from neighbouring Kwara, Kogi, Osun, Ondo and Ogun States. Important migrant Yoruba groups and tribes living in the state are Egba, Ijebu, Remo, Ife, Ijesa, Ekiti, Hausa, Igbo, Urhobo, Itsekiri, Ibiobio, Ebira, Fulani, Nupe, Igala, etc.[7]

The fact that the sub-ethnic groups in the present Oyo State were those that had the greatest influence of the old Oyo empire makes Oyo State to be called 'the proper central Yorubaland' and their dialect as authentic Yoruba dialect, but share a common history, culture and life style. The state is one of the richest cultural areas of Nigeria. As the seat of Old Oyo Empire, the state is known for Yoruba ancient traditional festival and celebrations.[8]

In terms of Art, Oyo State is ranked among the culturally richest in Nigeria. World-wide however, Oyo people are well known for traditional CALABASH CARVING, CLOTH WEAVING and Dyeing. They are also known for manufacturing traditional Yoruba drums used in palaces such as *Gangan, Bata, Gbedu, Dundun* and *Sekere*.[9]

Population wise, Oyo State is the nineth largest state in Nigeria.[10] According to 1991 provisional census report,[11] the state had a population of 3,488,789. The State is one of the most densely populated states in Nigeria. It is also the most urbanized, only after Lagos in the federation. Ibadan, its capital is reputed to be the largest indigenous in West Africa. According to 1991 Census, the population of the people living in and around Ibadan is 1,829,187.[12]

2.1.2 Creation, structure, people and culture of Osun State

Osun State was created on August 27, 1991, along with eight others by the regime of President Ibrahim Babagida. It was carved out of the former Oyo State and it is located in the tropical rain forest in the South-West of Nigeria and covering an estimated area of 8,602 square kilometers.[13]

Osun State is bounded on the East partly by Ondo State and partly by Ekiti State, on the West by Oyo State, on the North by Kwara State and on the South by Ogun State. It is largely inhabited by the Osun, Ijesa, Ife and Igbomina Communities, who are Yoruba speaking and who form part of the larger Yoruba nation concentrated in South-Western Nigeria and who are also found in the diaspora.[14]

There are people from other parts of the country in the major towns of the state, notably Osogbo, Ile-Ife and Ilesa[15]. The state is thickly populated and highly urbanized. According to 1991 national population Census, Osun State has a population of 2.2 million inhabitants[16].

The State, when it was created, had twenty-two Local Government Areas initially. However, with the creation of additional Local Government Areas in September, 1991, it had one more Local Government – Ifedayo Local Government bringing the number of Local Government Areas in the State to twenty-three[17].

During the regime of Late General Sanni Abacha in 1997, additional states and Local Government Areas were created and Osun State had seven additional Local Government Areas bringing the number to thirty.[18] The Local Government Areas and their headquarters are as follows:

LOCAL GOVERNMENT AREAS	HEADQUARTERS
Atakumosa East	Iperindo
Atakumosa West	Osu
Ayedaade	Gbongan
Ayedire	Ile-Ogbo
Boluwaduro	Otan-Ayegbaju
Boripẹ	Iragbiji
Ẹdẹ-North	Ọja-Timi
Ẹde-South	Ẹdẹ
Ẹgbẹdọrẹ	Awo

Ejigbo	Ejigbo
Ifedayọ	Oke-Ila
Ifẹlodun	Ikirun
Ifẹ-Central	Ile-Ifẹ
Ifẹ-East	Oke-Ọgbọ
Ifẹ-North	Ipetumodu
Ifẹ-South	Ifẹtẹdo
Ila	Ila-Ọrangun
Ilesa-East	Ilesa
Ilesa-West	Ereja square, Ilesa
Irẹpọdun	Ilobu
Irewọle	Ikire
Isọkan	Apomu
Iwo	Iwo
Obokun	Ibokun
Odo-Ọtin	Okuku
Ola-Oluwa	Bode-Osi
Ọlọrunda	Igbọna
Oriade	Ijẹbu-Jesa
Orolu	Ifọn-Ọsun
Osogbo	Osogbo

The people of Osun State are as enterprising as their other Yoruba counterparts in other states. They are mainly traders, artisans, and farmers. Other occupations they engage in include making of hand woven textiles, ties and dye-clothes, leather works, calabash carving and mat making.[19]

Ile-Ife, reputed to be the home of Oduduwa, the father of the Yoruba, is a famous town in the state as it attracts visitors from the whole world who visit the town to acquaint themselves with its rich cultural heritage, history and civilization of Yoruba people. Ile-Ife also houses a famous museum of arts and cultural history. Apart from this, many towns in the state are endowed with natural resources and art of culture. The popular Erin-Ijesa water-falls which attracts visitors from various parts of the country is also in the state.[20]

Traditional music and dancing are other important features of the culture of the people of Osun State. The *Gangan, Bata* and *Gbedu* are also prominent types

of drums often used at various traditional and social festivals that come up often in the lives of various communities.[21]

Osogbo, the State Capital is very rich in art and culture. It is known for traditional cloth weaving and dyeing and that earned it the appellation of *Osogbo, Ilu-Aro* – Osogbo, the town of dyeing.[22]

2.2 THE ADVENT OF ISLAM AND *SHARĪ'AH* IN YORUBALAND

Before discussing Islam in Yorubaland, there is the need to briefly trace the history of its emergence in Nigeria before coming to Yorubaland. Islam was spread to West Africa through the activities of the Muslim merchants and clerics. According to Stride and Ifeka, Muslim merchants and clerics, often one and the same person, made the spread of Islam an important part of their activities in West Africa. Most peoples of the Savanna belt received their first knowledge of Islam from a wandering trader and most of the earliest conversions were effected through this agency. Thus Islam established its first roots in African cities by peaceful persuasion.[23]

History of Islam in Nigeria will however be incomplete if mention was not made of the spread of Islam to Kanem-Bornu and Hausaland. Some records attribute the conversion of the people of Kanem-Bornu to Islam to some members of the Umayyad ruling house.[24] Hunwick however asserts that the first Muslim ruler was Umme-Jilmi who reigned from 1085 – 1097 C.E. He was said to have been converted to Islam by one Muhammad ibn Mani.[25]

In the case of Hausaland, Islam is said to have been first introduced there in the second half of the fourteenth century by Wangarawa merchants. However, some historical records claim that introduction of Islam to Hausaland was earlier than that through contacts with Bornu whose tradition of Islam goes back some three centuries prior to this.[26]

Yorubaland, being a sectional part of the country known as Nigeria, although situated in the South Western part of the country, also came in contact with Islam at a particular period. Since this study focuses its attention on Oyo and Osun States, which are parts of Yorubaland, it becomes pertinent therefore, to begin by tracing the history of Islam into Yorubaland before going into the two states. The history of Islam in these places is therefore discussed as well as the emergence of *Sharī'ah* there.

2.2.1 **The advent of Islam in Yorubaland**

Islam has a long history in Yorubaland. According to Gbadamosi, Yorubaland had some contacts with the Islamised areas both in war and in peaceful time through the activities of soldiers, settlers and above all traders. This varied contact meant some intermingling of peoples and ideas, an intermingling which facilitated the infiltration of Islam in Yorubaland.[27]

Historians find it difficult to attach a specific date to the introduction of Islam in Yorubaland. Gbadamosi asserts that the introduction of Islam in Yorubaland was unannounced and unplanned; and, for the most part, the first Yoruba Muslims had to worship privately and secretly. According to him, what is fairly certain is that in the seventeen century, mention was made of Muslims in Yorubaland.[28] Doi seems to share the same opinion while making reference to the book of Ahmad Baba (d. 1610C.E.) where he had mentioned Yorubaland as an area where "unbelief predominates and Islam is rarely found". Hence, Islam was already introduced in Yorubaland in the early seventeenth century.[29]

Suggesting earlier date of introduction of Islam to Yorubaland, Shaykh Adam Al-Ilori was reported to have opined that it was during the period of Mansa Musa of Mali (d. 1337C.E.) that Islam spread to most parts of Nigeria, including Yorubaland. It is likely that there were Muslim traders from Mali who came to Old Oyo and thus Islam was introduced through them to many parts of Yorubaland.[30]

Some historians, particularly, the non-Muslims, like Samuel Johnson[31] and others who suggest eighteenth century as the date of the spread of Islam to Yorubaland seem to have drawn their conclusions from the impression that the spread of Islam in Yorubaland was based on the Fulani Jihad. Although, to some extent, the Jihad gave a boost to the spread of Islam, it is however noted that the spread of Islam had already become a factor in Yorubaland before the Fulani Jihad of 1804.[32] Even to the opinion of Gbadamosi, the Jihad and its aftermath obviously constituted a watershed. Rather than improving the position of Yoruba Muslims, however, initially it had rather tragic effects, scattering the Muslims and threatening their position.[33]

Islam was reported to have been in practice in Old Oyo during the reign of Alaafin Ajiboyede (1560 – 1570C.E.). According to Sanusi[34] and Doi[35], one learned Shaykh or Mallam called "Baba-Kewu" from Nupe sent his son "Baba-Yigi" to the Alaafin to remonstrate against his unjust and cruel manners in

avenging his son's death on innocent people, when his son had died a natural death. He said, "the act is a sin against God who took away the life of your son". The Oba was said to have regretted his action and sought pardon from the people. This report shows the existence of Islam and the Muslims in the Old Oyo Empire as at the time. It also suggests that there must have been Muslim scholars present in Old Oyo who had engaged in teaching and preaching of Islam.

In many of the large towns, there were at least some sprinklings of Muslims. Gbadamosi observes that Owu, before its destruction in 1825, contained many Muslims.[36] Badagry evidently had some Muslim Community whose colourful celebration of the *'Id -al-fitr* was watched by Lander on 27th March, 1830.[37] He states further that Islam was long established at Ketu and by the close of eighteenth century, Muslims constituted a noticeable force in Ketu's army. In Lagos, mention was made of the presence of Islam first at the Court of Adele (I) (1775 – 1780, 1832 – 1834). He permitted the practice of this religion, at the expense of his throne in 1780. When he came back to Lagos in 1832, Islam was again firmly planted in his court in Lagos, and Muslims in and outside the Court enjoyed his patronage.[38]

It is evident from our discussion so far that Islam gained entrance to many parts of Yorubaland through peaceful means. The activities of the Muslim merchants and clerics assisted in the spread of Islam in Yorubaland. Islam had gained firm root in places like Badagry, Igboho, Ikoyi, Iseyin, Ketu, Epe, Lagos, Oyo, Ibadan, Osogbo, Ogbomoso and many other places in Yorubaland before 1840.[39] Since this study is centered on Oyo and Osun States, particular reference will be made later to some towns in these States while discussing the advent of Islam there.

2.2.2. **The introduction of *Sharī'ah* in Yorubaland**

One fact that is not deniable is that *Sharī'ah* can never be separated from Islam. Islam is *Sharī'ah* and vice-versa. Therefore, wherever we find Islam, *Sharī'ah* is always there. This fact cannot be over looked or denied of Yorubaland too. Having established the fact that Islam and Muslims existed in the area from a long time ago, the existence of *Sharī'ah* there should not be doubtful. Although the application of *Sharī'ah* in this area was mostly on issues relating to Islamic personal law, there were few places where the criminal aspect was implemented.

This, however, generated mixed feelings among the people as a result of misconceptions.

As it has been said earlier that Islam entered Yorubaland through the North via Bornu, Mali, Nupe, and Hausaland, it came along with *Sharī'ah* to this area. Where Islam was firmly established, efforts were also made to study Islam and its divine Law in detail, towards the facilitation of dispensing justice with *Sharī'ah*. Ajetunmobi[40] confirms this by saying that by 1894, Islam had gained ground in the entire Yorubaland and the general pattern of life of the Muslim community was conducted in conformity with the *Sharī'ah*. He further makes reference to the following to buttress his point quoting Gbadamosi thus:

> In the period 1861-1894, a most striking feature of the development of Islam was the further entrenchment of Muslims in the political set up of many of those (Yoruba) towns and the corollary movement towards establishment of an Islamic State.[41]

Moreso, the Jihad of Uthman b. Fudi (1754 – 1817 C.E.) which was meant to reform the society and establish Islamic legal system had impact on the Yoruba Muslims. Doi opines that the Jihad had influence not only on the Hausa-Fulani Muslims but also on the Southern (Yoruba) Muslims. He mentions that the learned Mallams who came to teach Islam, after the Jihad in Yorubaland were those who were already conversant with Shehu Uthman's movement of getting rid of what is called 'devilic innovations' from the practice of Islam. Those people not only taught Islam but also taught the *Sharī'ah*.

The above assertion conforms to Ajetunmobi's opinion that activities of Yoruba Muslim societies were enhanced by the preaching and teaching of competent Islamic Scholars who were knowledgeable in not only Arabic language and its allied disciplines but were also versatile in Qur'anic exegesis, the Prophetic Sunnah and Hadith, science of Islamic theology and history.[43] They were reported to have taught many other books among which were books of Islamic jurisprudence or *Sharī'ah*. This statement is also a testimony:

> On Law, the standard work used was the famous compendium, the *Risala* by ibn Abi Zayd Al-Qayrawani together with the *Mukhtasar* of Khalil al-Jundi, a fact which immediately reveals which school of Law was popular among the Yoruba Muslims.[44] In addition, *Kitab Jumlat al-masa'il al-fatawi* by one 'Ali bn Al-Husain al-Samidi was among many other Islamic legal works taught by Yoruba Muslim scholars.[45]

It is evident that before the advent of the Christian colonialists in Yorubaland, Islam had a firm footing and the *Sharī'ah* had been in operation in the area.[46] They did not fail to practice *Sharī'ah* at least in the various mosques, particularly in matters relating to marriage, child naming, funeral ceremonies as well as matters of inheritance.[47]

In addition to the above, in some parts of pre-colonial Yorubaland, justice was dispensed according to *Sharī'ah* and it was applied fully in some towns in Yorubaland. Okunola asserts that before the time of the colonial era between 1860 and 1894, the *Sharī'ah* had been firmly established in some principal Yoruba towns like Iwo, Ikirun, Ede, Ibadan, Lagos and Epe.[48] Some of these towns are extensively discussed in some other sections since those who fall under our area of study need serious focus with a view to ascertaining the application of *Sharī'ah* there.

More importantly however, many evidences abound to show that Yorubaland was almost a caliphate particularly in matters of Islam and the application of the *Sharī'ah*. One of such evidences is the impact of *Sharī'ah* on Yoruba culture. This is seen in the presence of Arabic legal loan-words or infiltration of *Sharī'ah* terms of expressions in the Yoruba language. There are expressions like "O da seria fun-un" meaning, he meted out to him the punishment he deserved according to *Sharī'ah*, and "O to suna" meaning, 'it is in line with the *Sunnah*, that is, it is legally right and it is according to the *Sunnah* of the Prophet Muhammad (S.A.W).[49] There are many other legal expressions which are often used by Yoruba Muslims and non-Muslims alike. These include *halāl, harām, alefa* and *alebu*,[50] meaning the permissible, the prohibited, vicegerent and defect respectively.

One other evidence that needs to be cited here is the existence of Alkali families in Yorubaland. In most of the towns where *Sharī'ah* had been applied,

there are families and compounds bearing Alkali as their names.[51] This, according to Doi, was as a result of the fact that their ancestors were at one time or the other, the *Sharī'ah* Court judges.[52]

One other fact which Okunola advances to support the existence of *Sharī'ah* in Yorubaland before the advent of the British was the appointment of Grand *Muftī* for Yoruba Mallams and Imams in the early 20th century. An accomplished author on Islam, Ahmed Al-Rufai b. Bello, was said to have been appointed the Grand *Muftī* of the Yoruba Mallams, Imams and Jurists.[53] The argument, therefore, is that a grand *Muftī* could not have emerged if there had not been existing jurists and scholars in Yorubaland.

Okunola[54] further makes reference to some press reports to drive his points home. For example, in the *Daily Times* of 14th of September, 1881 the editor said, "Yoruba Muhammedanism (Muslim) walks and gallops about with vigour, nobleness and energy of independent manhood." Similarly, the *Daily Observer* of 3rd and 24th September, 1887 commented thus:

> Silently but eloquently Muhammedanism (Islam) is declaring itself a power among us.

A European Colonial writer J. M. Lewis was reported to have been impressed by the growth and activities of Islamic Maliki Law in Yorubaland and wrote as follows:

> In West Africa as opposed to East Africa, Islam strongly emphasis the Law in society.[55]

The above evidences are testimonies to the existence of the *Sharī'ah* in Yorubaland before the advent of the British. Their arrival was the bane of its existence as we shall see in the next chapter.

2.3 THE DEVELOPMENT OF ISLAM AND *SHARĪ'AH* IN OYO STATE

2.3.1 The development of Islam in Oyo State

Oyo State, as earlier mentioned, is one of the component units of the Federal Republic of Nigeria. It is also one of the Yoruba speaking states of the country. It was first created in 1976 when it was carved out of the then Western

State and later in the year 1991 Osun State was carved out of it to have the present Oyo States. It consists of 33 Local Government Areas. Although Ibadan is the Capital city, there are many other big towns in the State. These include Oyo, Ogbomoso, Iseyin, Saki, Igboho, Kisi, Igbo-ora, Eruwa,[56] etc.

An attempt to discuss the development of Islam in Oyo State is never to cover all areas within the state. It is just an attempt to look at the introduction of Islam in some parts with a view to ascertaining when Islam emerged in the state. It must however be cleared here that although the state was first created in 1976, that is not to say that the development of Islam in the state began in that year. Islam had been introduced in almost all parts of the state long before then as will be shown here.

As the date of introduction of Islam in Yorubaland is uncertain, so also it is difficult to fix the exact date of the entry of Islam to Oyo State. Historical records show, however, that mention was made of Muslims in Yorubaland in the 17th Century. In fact, by the middle of the 17th century, a Muslim community had been established in Old Oyo.[57]

Prior to this period, Yorubaland seemed to have had contact with the already Islamised areas, especially those to the North-West of Yorubaland through the activities of soldiers, settlers and traders. Those areas include Songhai and Mali. Thus, by the 18th Century, the Islamic religion had spread to Igboho, Kisi, Saki, Iseyin, Ogbomoso and Oyo.[58]

Some records show that Yoruba people came to know about Islam from its first day from traders and ambassadors of Mali who were present in Yorubaland, especially in Old Oyo. Doi refers to Shaykh Adam al-Ilori as opining that it was during the period of Mansa Musa (d. 1337) that Islam spread to Yorubaland; hence Muslims in Yorubaland are called 'Imale' meaning that the religion came from Mali to Old Oyo and thus Islam was introduced there and some other places.[59]

There are some other historical records that show that Islam was fairly well established in Old Oyo probably during Alaafin Ajagbo. Gbadamosi[60] and Doi[61] assert the effort of "Alfa Yigi" or "Baba-Yigi". According to Gbadamosi, the man stayed in the palace at the request of the Alaafin; and it was around him that the nucleus of converts gathered.

Islam is reported to have been introduced to Saki around eighteenth century by Abdullah Fulani, a dried fish seller and at the same time a Muslim preacher who

came from Sokoto. He settled near a stream called Osooro which was later called Imale – Falafia where he started preaching the religion. He admonished people to believe in only one God and follow all the tenets of Islam. On account of his persistent preaching and exemplary character, some of the traditionists were impressed; hence they abandoned their traditional practices and embraced Islam. The prominent among the early converts were Alufa Megida, Alufa Aminu, Alufa Nafiu and Alufa Masa.[62]

However, another account states that the coming of Islam to Saki was through one Saliu Dindi from Dahomey. On his arrival, he settled at Asun-nara compound and brought along with him some spiritual items like a copy of the Arabic Qur'an, an ablution kettle, prayer skin, slate and rosary. Four of his pupils followed him down. Having settled down, Mallam Saliu, together with his pupils, engaged in open air services as well as the teaching of Arabic and Islam to the people. They ensured that their services covered all parts of the town and their adjoining villages. These activities resulted into conversion of many indigenes.[63]

Islam arrived Iseyin in about 1760 through one Mallam Aboki who was said to have hailed from Katsina. He practised Islam all alone for some time before he could get some converts. He was able to build a mosque in 1770 at Idi-Ose area of the town, ten years after his arrival there. The arrival of some Kanuri and Dendi Muslims however complimented Aboki's efforts at propagating the religion.[64]

The account of Gbadamosi however reveals that the early Muslims to Iseyin reportedly came from Songhai or Mali area and were regarded as having introduced the faith which they and succeeding generations had helped to sustain since then. Prominent among them were Kanuri and Dendi Muslims. It was from among some of these families that the first few Imams, and many of the later ones, have been selected.[65]

Apart from Old Oyo, Saki and Iseyin, other towns had similar experience of Islamic religion. For example, at Igboho as Gbadamosi puts it, the town had a fairly extensive section called Molaba, completely settled by Muslims who were in considerable numbers and had their quarters and central mosques in their own area.[66]

In the case of Ibadan which is the capital city of Oyo State, the introduction of Islam into the town could be traced to the early period of its foundation. Written records show that there were Muslims in Ibadan as early as 1829 with a man called

Igun-Olorun or Gunnugun in some records as their Imam.[67] El-Masri however observes that the Muslims then were few in number and were only nominally Muslims, since they maintained to a large extent their pagan practices; their knowledge of Islam was meager and imperfect.[68]

As a corollary to the above, Abdul-Rahmon states that Shaykh Rufa'i in his account of the history of Ibadan, attributes the corporate existence of Muslims in Ibadan to the arrival of Uthman Basunu and Ahmad Qifu, but he admitted the existence of Islam before their arrival although, it was a private affair and more syncretic than puritanical.[69]

El-Masri however asserts that true Islamization in Ibadan only began in the early 1830s when learned Muslim teachers came from Hausa country through Ilorin and started to preach there. He mentions Ahmad Qifu and Uthman b. Abu-Bakr as notable among the first preachers and claims that the former came during the reign of Oluyedun within the first few years of the foundation of the town, while the latter came during the period of the ascendancy of Basorun Oluyole.[70] Awe also admits this fact when she says:

> as early as the 1830's when Oluyole was supreme in Ibadan, Muslim teachers and missionaries had been allowed to settle in Ibadan…[71]

Apart from the above, Awe makes us to believe that the Ibadan chiefs of that period used to implore the services of the Muslim priests for spiritual assistance and even requested their company in their outings. She states this as follows:

> Indeed, Ibadan Chiefs always included a few Muslim priests in their entourage because of the reputed efficacy of their charms.[72]

Moreso, reports had it that many important chiefs of Ibadan later embraced Islam and played significant role in the resurgence of Islam. Gbadamosi reports the case of Opeagbe who became a notable patron of the Muslims in Ibadan. He rose from the minor rank of a Sarumi under Oluyole to become an Osi Balogun, the

third leading war chief, in the late 1840s. He later became Baale of Ibadan in about 1850. Under his patronage, the Oja-Oba mosque was rebuilt and open joint worship was begun again.[73]

Awe also admits this fact in her words as follows:

> infact, notable chiefs such as Osundina, the Osi Balogun in the 1850's and Are Latosa (1877 - 1885) were Muslim converts.[74]

The above account seems to be the situation in many parts of Oyo State. As soon as Islamic communities were established in many towns in the State, the Muslims built mosques and acquired as distinctive character manifested in their habits and customs associated with such Islamic practices as the observance of the five daily congregational prayers, fasting in the month of Ramadan, annual pilgrimage to Makkah and Madinah, a special mode of dressing and abstention from alcoholic drinks by devout Muslims.[75]

2.3.2. The advent of *Sharī'ah* in Oyo State

In all the areas from where Islam percolated into Yorubaland, it had been reasonably well established and the *Sharī'ah* as a comprehensive system of law has been well known. Therefore, Oyo State, which is one of the Yoruba-speaking states, cannot be left out of this.

Sharī'ah forms an integral part of Islamic religion. As Ambali mentions, "wherever there are Muslims, it is implicitly understood that Islamic Law (*Sharī'ah*) is already introduced."[76] The advent of *Sharī'ah* in Oyo State is therefore traceable to the introduction of Islam in the State. This could be best understood in the words of Gbadamosi thus:

> a discussion of the *Sharī'ah* in any part of the Muslim world must begin with the introduction of Islam into the area as a faith and as a way of life.[77]

The introduction of Islam into Oyo State as earlier discussed actually brought about the *Sharī'ah* in the state. Since Islam has been a factor in Yorubaland from the end of the eighteenth century, it is not surprising that right from its foundations, *Sharī'ah* had been applied by the Muslims in the area. *Sharī'ah* which is not limited to legal aspects only, covers other aspects of life. Hence Oyo State Muslims, in the first place, adhered strictly to the basic tenants of *Sharī'ah* by observing the five fundamental principles of Islam which serve as the basis of *Sharī'ah*. This probably may be the reason why Gbadamosi describes Yoruba Islam as being orthodox (Sunnah).[78]

It is to be noted here that *Sharī'ah* practice in many towns in Oyo State was not limited to the religious sphere. In the area of law, they applied *Sharī'ah* Law on issues like marriage and inheritance. Gbadamosi asserts that evidence abounds of a widening of the scope of the application of the *Sharī'ah* into such spheres as marriage, inheritance and the like especially among the scholarly, and the religious leaders.[79] To corroborate this, Ambali states thus:

> Islamic Law is practiced in terms of say, (*Nikāh*) marriage, and (*Meerath*) succession, but in a purely individual and private capacity.[80]

Although, in Ambali's opinion, the *Sharī'ah* was practiced in Yorubaland with little prominence and that brings about the statement, "but in purely individual and private capacity", he however confirms its application there. Further confirmation is made by his argument that the absence of the Jihad or its effects accounts for the lower level of the practice of *Sharī'ah* in the South (Yorubaland) than in the North among the Muslims".[81]

What could be deduced from above is the fact that *Sharī'ah* practice in Yorubaland was known to be of private matter. There were however instances when the Muslims in this area strongly agitated for the establishment of *Sharī'ah* courts so as to be officially allowed to apply *Sharī'ah* but were denied. In Oyo State for example, there were occasions when Muslims there publicly requested for the establishment of *Sharī'ah* Courts. It is on record that the Muslim community of

Ibadan in 1938 demanded from the Government that they be allowed to apply *Sharī'ah* but were refused.[82]

Agitations for the application of *Sharī'ah* by the Muslims in Oyo State continued from one period to another. On Saturday 7th February, 1976, a meeting was held at the central mosque of Ibadan under the auspices of National Joint Muslim Organisation of Nigeria (NAJOMO). The meeting was attended by representatives of the Muslims of Ogun, the then Ondo and Oyo States. The meeting decided to put up a petition for *Sharī'ah* Courts to the constitutional drafting committee set up by the then Military Government. The thrust of their petition was dual. One, they wanted constitutional provisions that would enable any group of Muslims anywhere in Nigeria "to regulate their affairs by their religious law (the *Sharī'ah*)"; and two, they wanted "*Sharī'ah* Courts established in Ogun, Oyo and Ondo States in such numbers as the Muslim population in the respective states warrants".[83]

Apart from the above, many other Muslim bodies and individuals wrote to the Constitution Drafting Committee in 1978, during the deliberation on the 1979 Constitution on the need to include the issue of *Sharī'ah* in the Constitution and allow Muslims in various parts of the country to establish *Sharī'ah* courts. There were also some Muslim pressure groups that wrote to the Constituent Assembly.[84] The memorandum of Noibi and Malik of the Department of Arabic and Islamic Studies, University of Ibadan, Ibadan dated 8th February, 1978 to the Constituent Assembly could be cited here as evidence.[85]

Moreso, the Oyo State League of Imams and Alfas in conjunction with their counterparts in Lagos, Ogun and Ondo States in May, 1984 publicly made their call for the establishment of *Sharī'ah* courts in Yorubaland.[86] This effort was corroborated by the campaign for *Sharī'ah* by some Muslim individuals and groups. Late M.K.O. Abiola, Baba-Adini of Yorubaland spear-headed the campaign for the *Sharī'ah* in Yorubaland and championed its course to a laudable extent. The Muslim Students Society of Nigeria, the Organization of Muslim Unity (OMU) as well as many other Islamic Organizations held various lectures, seminars, symposia and conferences in 1984 and in the then Oyo State, and passed resolutions calling on the Muslims to rise up for their rights on *Sharī'ah*.[87]

The agitation for the establishment of *Sharī'ah* courts in Oyo State has not stopped. The Oyo State Muslim Community continued to mount pressure on the State Government through the State House of Assembly to establish *Sharī'ah* courts. A Bill was said to have been prepared on the issue and forwarded to the House of Assembly. Apart from this, the National Council of Muslim Youth Organizations (NACOMYO) Oyo State chapter in conjunction with some Islamic bodies planned to establish *Sharī'ah* courts in some mosques in Ibadan with a view to applying *Sharī'ah* Law of personal status among Muslims on private level pending the official establishment of *Sharī'ah* courts by the Government.[88] It was this that metamorphosed into Independent *Sharī'ah* Implementation Panel in Ibadan which is discussed in the next chapter.

Prior to the above, there had been some Muslim groups in Ibadan who had been applying *Sharī'ah* among themselves in their domains. The Bamidele group applies *Sharī'ah* within its membership till now. *Sharī'ah* is applied among the Hausas in Sabo, the Igbiras in Ago-Igbira and the Tapas in Ago-Tapa, all in Ibadan and its environs.[89] This is however examined fully in the next chapter.

2.4 THE GROWTH OF ISLAM AND *SHARĪ'AH* IN OSUN STATE

2.4.1. The growth of Islam in Osun State

As earlier mentioned in this chapter, Osun State was carved out of the former Oyo State to become an autonomous state in the year 1991. It is therefore one of the component units of Nigeria and one of the Yoruba speaking states. It consists of thirty Local Government Areas. Apart from Osogbo that is the state capital, there are some other big towns in the state. They include Ede, Iwo, Ikirun, Ife, Ilesa, Ikire, Ejigbo, Okuku, Inisa, Ila, Gbongan, etc.

An attempt to discuss the growth of Islam in Osun State here is not to go into details of how Islam came to each town in the state. It is just to give insight into Islam in the state. Our mind should not however be restricted to 1991 when the State was created since that was not the time Islam was introduced there. It began a long time before then. Our focus therefore should be when Islam was actually introduced in the area now called Osun State.

Like any other area in Yorubaland, the date when Islam was introduced to Osun State is very difficult to ascertain. As Gbadamosi observes, "It was unannounced and unplanned; and, for the most part, the first Yoruba Muslims had to worship privately and secretly". He states further that what is fairly certain is that in the 17th century, mention was made of Muslims in Yorubaland.[90]

Before this period, Yorubaland seemed to have had contact with the already Islamised areas especially those to the North West of Yorubaland though the activities of traders, settlers, preachers and mendicants. These areas include Songhai and Mali. Thus by the 18th Century, Islam had spread to places like: Osogbo, Ede, Ikirun, Iwo, Ikire, Ejigbo, Ila, Inisa, Orile-Owu and many other places in the area now called Osun State. Gbadamosi asserts that "in many of the large towns there were at least some sprinklings of Muslims. Owu before its destruction in 1825, contained many Muslims".[91]

The resurgence of Islam in Yorubaland between 1840 and 1860 was demonstrated in many towns in the area now called Osun State. There were situations whereby fleeing Muslims took refuge in some towns, joined the few Muslims in such towns and organized them in a community. According to Gbadamosi,[92] this is true of such old towns as Osogbo and Ede which, in this period, provided a haven for many refuges, some of whom were Muslims. He mentions further that some of those refugee or 'settler' Muslims were clearly more distinguished than their hosts either by birth or in Islamic knowledge. Consequently, it was usual for them to play an active part in the organisation of the nascent Muslim community. The example of this was the 'Imole Compound' in Ede.

The introduction of Islam to Ede was about the first half of the 19th Century during the reigh of Timi Bamgboye (1816 – 1841), the second Timi of Ede. It was said to have been introduced there before the fall of Oyo Empire 1814 – 1836.[93]

The contact of the itinerant Hausa traders and nomadic Fulani cattle rearers with the Iwo people in the late 18th and early 19th centuries brought Islam to the town. This was during the reign of Oba Oderinlo (1795 – 1920), who was

nicknamed Oba Alahusa because of his love for the Hausa migrants who settled in his domain.[94]

The formal introduction of Islam to Ikirun dates back to the second half of 19th century during the reign of Oba Oyewole. Earlier before then, the presence of Hausa, kolanut traders had been noticed in the town and this suggests that there had been some element of Islamic influence in the town before it was formally introduced.[95]

Osogbo, the state capital of Osun State, was suggested to have got the wind of Islam in the early part of the 19th century. Historical records show that the Fulani attack was halted at Osogbo in the year 1840 and Islam existed in the town before then. It is suggested that Islam was introduced to Osogbo in 1820s by Oyo Muslim traders.[96]

There is however oral information which states that Islam was introduced to Osogbo during the reign of Ataoja Matanmi I (1854 – 1864)[97] when some scholars from Bornu migrated to the town. The report had it that Ifa Oracle predicted the coming of those people to the Oba who received and accommodated them. They were requested to pray for the barren wife of the Oba who later bore a child.[98] It is to be observed here that Islam could have been introduced to Osogbo earlier than this time as already mentioned, however, the coming of the scholars seemed to be a boost to Islam in the town particularly when the visitors were received at the palace by the Ataoja himself.[99]

Some other records reveal how Islam became more prominent in Osogbo as a result of the influx of Oyo immigrants to the town in 1835. When Old Oyo was sacked by the Fulani in that year, the Oyos migrated to the towns they frequented for trade during the peace period and Osogbo was one of these towns frequented by them. Among the Muslim immigrants from Old Oyo who came to Osogbo and settled there after the sack of Oyo in 1835 were people like Muhammad Idris and Salih Abu Abd-ar-Rahman.[101]

Based on the fact that Islam gained entrance into Yorubaland through the activities of traders, preachers, mendicants and scholars, it was obvious that they moved and travelled to many Yoruba towns and thus circulated more information about this area and its people to the '*Ulam*ā' living far away. As a result, more and

more Northern scholars and traders began to visit interior Yorubaland while some of them came as preachers to preach in many towns.[102] From there, many people embraced Islam and Muslim communities were formed. Such was the situation in many towns in Osun State. Immediately Muslim communities were formed, mosques were built and the injunctions of the religion as stipulated in the Qur'an and *Sunnah* were put into practice.

2.4.2 The emergence of *Sharī'ah* in Osun State

The introduction of Islam, in any part of the world is always followed by the emergence of *Sharī'ah* for the two go pari-pasu and they are inseparable. According to Gbadamosi,[103] a discussion of the *Sharī'ah* in any part of the Muslim world must begin with the introduction of Islam into the area as a faith and as a way of life.

Ambali[104] also asserts that "wherever there are Muslims, it is implicitly understood that *Sharī'ah* is already introduced." It is however noted here that the level of its application varies from one place to another.

In any discussion of the application of *Sharī'ah* in Yorubaland, Osun State cannot be left out. This is because the state has principal Yoruba towns where *Sharī'ah* was firmly established and applied. While *Sharī'ah* could be said to have been applied in some towns of some other Yoruba states in some aspects of Islamic Law, there are evidences that *Sharī'ah* Law was applied fully in the domains of some Obas in some towns in the area now called Osun State during the pre-colonial period. Such towns are: Iwo, Ede and Ikirun.

In Iwo, it is on record that *Sharī'ah* was applied during the reign of Oba Memodu (Muhammad) Lamuye who was enthroned in 1860. The *Sharī'ah* was applied in his domain and the administration of the town was done in line with *Sharī'ah* till he died in 1906.[105] The Qadi appointed by Lamuye was Muhammad-Awwal Akintayo Omojiiro.[106]

Oba Habibu Olagunju of Ede also applied *Sharī'ah* in his domain during the second half of the 19th century. He was reported to have established the *Sharī'ah* court in an area called Agbeni. It was moved to another area called Agbongbe in 1914. The first Qadi was one Alfa Sindiku (Siddiq).[107]

In Ikirun, Oba Oyewole was also reported to have applied *Sharī'ah* in his domain. He established *Sharī'ah* court, which was presided over by one Alfa Bako from Ilorin as the Qadi.[108] Full discussion about *Shari'ah* application in these towns will be seen in the next chapter.

Although the presence of the British colonialists in Yorubaland led to the abolition of *Sharī'ah* in some places where they met it, the Muslims there did not relinquish their religion as well as the *Sharī'ah*.[109] So was the case of Muslims in the towns in Osun State. They continued to practice *Sharī'ah* in their various mosques, particularly in matters relating to marriage, child naming and funeral ceremonies. Some of them even applied the *Sharī'ah* in matters of divorce and inheritance. They however continued to demand for the establishment of *Sharī'ah* courts from the Government in the State.

In an attempt by the Muslim Community of Osun State to demand for the establishment of *Sharī'ah* in the state, the League of Imams and Alfas of the state had on one occasion or the other joined their colleagues in other parts of Yorubaland to publicly demand for the establishment of *Sharī'ah* in their states.

The evidence of such a demand was the memorandum submitted to Osun State House of Assembly in December, 1999 by the League of Imams and Alfas in the state signed by their Chairman, Alhaji Shaykh Mustafa Ajisafe, the Chief Imam of Osogboland on the review of 1999 Constitution wherein the need for the establishment of *Sharī'ah* courts was clearly stated. Reference was made to the application of *Sharī'ah* during the pre-colonial era in Yorubaland particularly in Ede, Iwo and Ikirun which are parts and parcels of Osun State before it was contrived and abolished by the British Colonialists as a basis for their request. The request was further emphasized thus:

> the *Sharī'ah* is a Constitutional right of all Nigerian Muslims, Osun State Muslims should not therefore be exceptional. It is as a result of this we want to call on the honourable members of Osun State House of Assembly to critically consider this with a view to establishing *Sharī'ah* courts in Osun State since section 275 of the 1999 Constitution allows this.[111]

Different Islamic organizations or groups in the state organized series of lectures, symposia and rallies to publicly demand for the establishment of *Sharī'ah* courts in the state. For example, the Osun State Area Unit of the Muslim Students' Society of Nigeria (MSSN) on Wednesday 27th October, 1999 held a rally at Ansar-ud-deen School, Sabo, Osogbo to demand for *Sharī'ah* in Osun State. After the address of the Area Unit Amir, brother Qamarud-din Bello, members conducted peaceful protest round the town to call for the introduction of *Sharī'ah* in the State.[109] While reporting the incident, the Punch reported inter alia:

> ... in Osun State, over 500 Muslim adherents trooped to the streets of Osogbo, the State capital, canvassing the introduction of *Sharī'ah* Law in the State.[112]

The *Punch* reported further:

> the placard carrying protesters marched through Ayetoro, Oke-fia, Oja-Oba, Old Garage and Gbongan Road, chanting Islamic songs of solidarity.[113]

Moreover, the *Punch* observed the inscriptions on the placards and reported thus:

> some placards the protesters carried had such inscriptionsas 'Give us *Sharī'ah*', '*Sharī'ah*' a blessing to all Muslims and non-Muslims.[114]

Some other dailies that reported the incident also made their reports accordingly. In the report of the Nigerian Tribune, it stated that 'Muslim Youths numbering about 2,000 marched through the streets of Osogbo, the state capital calling for the introduction of *Sharī'ah* Law in the State', It referred to MSSN as the Muslim Youths when it reported thus:

> the Youths who came out under the aegis of the Muslim Students Society of Nigeria (MSSN) argued that the introduction of *Sharī'ah* in all States of the country would check the vices ravaging the country.[115]

Moreover, the National Council of Muslim Youth Organizations (NACOMYO), Osun State Chapter organized a state symposium on *Sharī'ah* titled – "Constitutionality of *Sharī'ah*: Problems and Prospects in Application" held on January 30th, 2000 at the Presidential Hotel Hall, Osogbo. It was well attended by some eminent Islamic Scholars, legal luminaries and important Muslim personalities in and outside the state.[116] Immediately after the programme, some of the participants who were eminent Muslim personalities held a meeting at NACOMYO Secretariat to review and appraise the programme and some decisions were arrived at.[117] These included that, the awareness made in the state through the programme should be followed up with some other enlightenment programmes on *Sharī'ah.* Secondly, that a meeting of Islamic Scholars and Muslim personalities who are indigenes of the state be called to review the programme with a view to actualizing the introduction of *Sharī'ah* in the State and thirdly, that a committee needed to be set up on *Sharī'ah* actualization in the State.[118]

It could be said therefore that, the meeting at NACOMYO Secretariat precipitated the formation of a committee on *Sharī'ah* in Osun State. Since it was unanimounsly agreed that day that some Islamic scholars and Muslim personalities as well as leaders of some Islamic organizations be invited to a meeting on the issue of *Sharī'ah* in the state, lawyer Abdul-Salaam Abbas and Alhaji Abdul-Fatah Makinde (this researcher) were mandated to champion the course of the meeting. Thenceforth, Osun State Committee on *Sharī'ah* was established and had since been working assiduously to educate and mobilise Muslims of the state for official demand for the establishment of *Sharī'ah* courts in the state.[119]

Apart from the above, there are some Islamic groups in the state that apply *Sharī'ah* within their membership as at present. Such groups are Islahudeen Missionary Association of Nigeria, Iwo under the leadership of Shaykh Abdul-Baki Muhammad and the Faaya group in Ikirun and some other places where their members are found within the state. Details about how these groups apply *Sharī'ah* among their members are discussed in the next chapter.

NOTES AND REFERENCES TO CHAPTER TWO

1. Omikunle, T. Ed. 1992. *Oyo State annual.* Lagos: Visionlink Nig. Ltd. p.63
2. *Ibid*. pp.64 – 65.
3. Oyo State Government, 1999. *A new era*. Ibadan: Oyo State Government Press. p.17.
4. Udo, R. K. and Mammon, A. B. Eds. 1993. *Nigeria: giant in the tropics.* Lagos: Gabuno Publishing Company Limited. 2: p.391.
5. Oyo State Government, *op.cit.* p.17.
6. *Ibid.* p.17
7. Udo and Mammon. Eds. *op.cit.* p.392.
8. *Ibid.* p.392.
9. *Ibid.* p.393.
10. *Ibid.* p.393.
11. *Ibid.* p.393. The information was also confirmed in the Osun State office of National Population Commission, Osogbo.
12. *Ibid.* p.393.
13. Adenaike, F. A. Ed. 1991. *The pioneers.* Ibadan: Syndicated Communication Ltd. p.6.
14. *Ibid.* p.6.
15. Udo and Mammon. Eds. *op.cit.* p.380.
16. *Ibid.* Information also confirmed in the Osun State office of NPC, Osogbo.
17. Osun State Government. 1992. *Osun State so far*. Osogbo: Ministry of Information. p.14.
18. Ministry of Information. 2000. *Information Month 2000 – Democracy Day* Osogbo: Osun State Government Press. p.30.
19. Osun State Government. 1992. *Osun State – the state of living spring.* Lagos: Macmillan Nig. Publishing Ltd. p.9.
20. *Ibid.* p.9.
21. *Ibid.* p.9.
22. *Ibid.* p.11.
23. Stride G. T. and Ifeka C., 1971. *Peoples and empires of West Africa.* Lagos: Thomas Nelson (Nig.) Ltd. p.133.

24. Ajetunmobi, M.A., 1988. *Sharī'ah* legal practice in Nigeria: 1956 – 1983. Ph.D. Thesis. Dept. of Religions. University of Ilorin. p.35.
25. Hunwick, J. O, 1965. Islam in West Africa, A. D., 1000 – 1800. J. F. A. Ajayi and I. Espie. Eds. *A thousand years of West African history.* Ibadan: Ibadan University Press. p.126.
26. *Ibid.* p.124.
27. Gbadamosi, T. G. O. 1978. *The growth of Islam among the Yoruba,* 1841 – 1908. London: Longman Group Limited. p.4.
28. *Ibid.* p.4.
29. Doi, A. R. I. 1984. *Islam in Nigeria.* Zaria: Gaskiya Corporation Ltd. p.109
30. *Ibid.* pp.109 – 110.
31. Johnson, S. 1997. *The history of the Yorubas.* Lagos CSS Bookshops Ltd. pp.26 and 38.
32. Doi, *op.cit.* pp.110 – 111.
33. Gbadamosi, *op.cit*. pp.214.
34. Sanusi, M. Z. 1987. *Azhar ar-ruba fi akhbar bilad Yuruba.* Bayrut: n. p. p.162.
35. Doi, *op.cit.* p.111.
36. Gbadamosi, *op.cit.* p.4.
37. *Ibid.* p.4.
38. *Ibid.* p.5. .
39. *Ibid*. pp.5 – 13.
40. Ajetunmobi, *op.cit.* p.47.
41. Gbadamosi, *op.cit.* p.67.
42. Doi, *op.cit* p.113.
43. Ajetunmobi, *op.cit.* p.48.
44. *Ibid.* p.48
45. *Ibid*. p.48
46. Noibi, D. O. S. 1988. *Islamic perspectives.* Ijebu – Ode: Shebiotimo Publications. p.52.
47. Okunola, M. A.1993. The relevance of *Sharī'ah* to Nigeria. N. Alkali etc. Eds. *Islam in Africa*. Ibadan: Spectrum Books Ltd. p.25.
48. *Ibid.* pp.24 – 25.
49. Doi, *op.cit.* p.213.

50. Noibi, *op.cit.* p.52.
51. Okunola, *op.cit.* p.26.
52. Doi, *op.cit.* p.213.
53. Okunola, *op.cit.* p.26.
54. *Ibid.* p.26.
55. *Ibid.* p.26.
56. Udo and Mammon, *op.cit.* p.393.
57. Omikunle, *op.cit.* p.97.
58. *Ibid.* p.98.
59. Doi, *op.cit.* pp.109 – 110.
60. Gbadamosi, *op.cit.* p.5.
61. Doi, *op.cit* p.111.
62. Lawal, M. O. 1984. The organization of Ansar-ud-deen society of Nigeria, Saki branch. NCE Project. Dept. of Islamic Studies. Oyo (now Osun) State College of Education, Ila – Orangun. p3.
63. Abbas, L. O. 2003. Imamship in Islam: Its concept and practice among the Yoruba of Oyo and Osun states. Ph.D.Thesis. Dept. of Arabic & Islamic Studies. University of Ibadan. p.81.
64. *Ibid.* p.79.
65. Gbadamosi, *op.cit.* p.5.
66. *Ibid.* p.5.
67. Abdul Rahmon, M. O. 1989. A thematic and stylistic study of Arabic poetry in Ibadan. Ph.D. Thesis. Dept. of Arabic and Islamic Studies. University of Ibadan. p.22.
68. El-Masri**,** F. H. 1967. Islam in Ibadan. P. C. Lloyd etc Eds. *The city of Ibadan.* Ibadan: Oxford University Press. p.250.
69. Abdul Rahmon, *op.cit.* p.22.
70. El-Masri**,** *op.cit.* pp.250 – 251.
71. Awe, B. A., 1964. The rise of Ibadan as Yoruba power in the 19th Century, Ph.D.Thesis. Dept. of History. University of Ibadan. p.124.
72. *Ibid.* p.124. The word 'Charms' used by Awe seems to be inappropriate. The appropriate word is 'prayers'.
73. Gbadamosi, *op.cit.* p.25.
74. Awe, *op.cit.* p.124.

75. Omikunle, *op.cit.* p.98.
76. Ambali, M. A.1998. *The practice of Muslims family law in Nigeria.* Zaria: Tamaza Publishing Company Ltd. p.29.
77. Gbadamosi, T. G. O. 2000. *Sharī'ah* in Nigeria: experience of the Southern Nigeria. A seminar paper presented at the national seminar on *Sharī'ah* at Kaduna between 10th and 12th February. p.2.
78. ……. *The Growth of Islam* …. *op.cit.* p.35.
79. ……. *Sharī'ah* in Nigeria … *op.cit.* p.4.
80. Ambali, *op.cit.* p.29.
81. *Ibid.* p.29.
82. Okunola, *op.cit.* p.28.
83. Gbadamosi, 2000. *op.cit.* p.7.
84. Okunola, *op.cit.* p.28.
85. See the appendixes for the text of the memorandum (Appendix I)
86. Okunola, *op.cit.*
87. *Ibid.*
88. Oral interview with Alhaji Ishaq Kunle Sanni (45 years), the National President of NACOMYO, on 28th October, 2000.
89. *Ibid.*
90. Gbadamosi, 1978. *op.cit.* p.4.
91. *Ibid.* p.4.
92. *Ibid.* pp.23 – 24.
93. Adejumo**,** G. M. 1995. Influence of Islam in Ede. M. A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. p.9.
94. Hamzat**,** T. K. 1991. Imamship institution in Iwo central mosque. B.A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. p.8.
95. Raheem, B. R. 1987. The contributions of *Rawdat al-Dirasat al- Islamiyyah wal-'Arabiyyah* to the spread of Arabic language in Ikirun. B.A. Project. Dept. of Religions. University of Ilorin. p.3.
96. Doi, *op.cit.* p.112.
97. OCHC**.** 1994. *History of Osogbo.* Osogbo: Igbalaye Press Limited. p.14.
98. Makinde, A. K. 1990. A study of the life and Arabic works of Alhaji Ashiru Irewole of Osogbo. B.A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. pp. 4 – 6.

99. *Ibid.* p.6.
100. Doi, *op.cit.* p.112.
101. *Ibid.* p.112.
102. *Ibid.* p.112.
103. Gbadamosi, 2000 *op.cit.* p.2.
104. Ambali, *op.cit.* p.29.
105. Okunola, *op.cit.* p.25.
106. Oral interview with Professor Abdul-Yakeen O. O. Oladipo (66years), a grandson of the first *Qadi* of Iwo. Professor Oladipo retired from OAU as a Professor of Agriculture in Ocotober, 1986.
107. Okunola, *op.cit.* p.25.
108. *Ibid.* p.25.
109. *Ibid.* p.25
110. A memorandum to Osun State House of Assembly on review of 1999 Constitution submitted by the League of Imams and Alfas on behalf of the Muslim Community of Osun State in December, 1999. (see appendix 2).
111. Oral interview with brother Ma'ruf Hassan (35 years) a former Amir of Osun State Area Unit of MSSN on 28th October, 1999.
110. The *Punch*. Thursday 28th October, 1999. p.6
111. *Ibid.* p.6.
112. *Ibid.* p.6.
113. *Nigerian Tribune*. Thursday 28th October, 1999. p.2.
114. The symposium was publicized by the *Guardian* of January 22, 2000, p.4. *Saturday Tribune* of January 22, 2000, p.9 and *Daily Monitor* of January 28, 2000, p.27.
115. Oral interview with Alhaji Mustafa Adeleke Olawuyi (50years), the State Co-ordinator of NACOMYO Osun State Chapter on 28th October, 2000.
116. *Ibid.*
117. *Ibid*.

CHAPTER THREE

INSTITUTION OF *SHARĪ'AH* IN OYO AND OSUN STATES

3.1 Institution of *Sharī'ah* in Oyo and Osun States

Sharī'ah application in Nigeria started a long time before the advent of the British Colonialists. It began immediately after the emergence of Islam in the country through Kanem-Borno in 1085 C.E. during the reign of Mai Ummu Jilmi. Ibn Batuta has confirmed that *Sharī'ah* was in some parts of the North as early as the 14th century and it was reinforced in the reign of Mai Idris Alooma.[1] Shaykh Muhammad Al-Maghili who arrived in Katsina in 1483 was reported to have contributed immensely to the establishment of *Sharī'ah* in the Northern areas.[2] After leaving Katsina, he settled in Kano during the reign of Muhammed Rumfa (1463 - 1499).[3] The first two functions which he was reported to have performed were the appointment of the Imam for Friday Prayers and a *Qādi* of which two jurists, Ahmad and Abdullah were recommended by him to occupy respectively.[4] Under the government of Muhammad Rumfa, he also established *Sharī'ah* Courts, the development of at least one of which he supervised himself.[5]

Sharī'ah got the real boost after the establishment of Sokoto Caliphate.[6] With the success of the Sokoto *Jihād*, early in the 19th Century, a Caliphate was established where *Sharī'ah*, in all its ramifications, was the law of the land. The application of *Sharī'ah* therefore took firm root in the areas covered by the Caliphate.[7] The Empire reigned for a century before the advent of the colonial administration.[8]

As *Sharī'ah* was practiced in the Northern part of Nigeria before the arrival of the British Colonialists, it was also applied in some parts of the South-West-Yorubaland. Although, there was the marked difference between the practice of *Sharī'ah* in the North and the South which is attributable to the effects of Jihad more than any other factor,[9] that is not to say that *Sharī'ah* was not practiced in the South. *Sharī'ah* was applied in some areas in the South-West of Nigeria before the advent of the British rule particularly where the rulers were Muslims. This development showed that Islam cannot be divorced from *Sharī'ah* and vice-verse. As a result, the practice of *Sharī'ah* was well established among some Yoruba

Muslim Communities. The *Sharī'ah* became a part of culture within the circle of some Yoruba Muslim royal families before the British rule.[10]

An attempt is made here to discuss some of these Yoruba towns particularly those who fall within our scope of study, where *Sharī'ah* was applied before the arrival of the British Colonial masters. These notable towns to be discussed are Ede, Iwo and Ikirun. *Sharī'ah* practice was at a particular period or the other established in the domains of their Obas as will be seen in our discussion.

3.1.1. ***Sharī'ah*** **legal practice in Ede before the colonial period**

The history of *Sharī'ah* practice in Ede before the colonialists centres on Oba Abibu Olagunju, the first Muslim to become the Timi of Ede and who also belonged to the first generation of Yoruba Muslims who held high political office in the 19th century. He was also reported to be, most likely the first Muslim Oba in Yorubaland.[11] It is therefore necessary to give his biographical account as brief as possible to drive our point home.

Oba Abibu Olagunju was born before 1817 to the Lagunju/Oduniyi royal household of Ede. As it was the practice among the Yoruba in those days to consult the Ifa Oracle whenever a baby was born into a family, his parents consulted Ifa Oracle and what came out was "Otura Meji" which revealed that the child was a pre-destined Muslim who must grow up a Muslim and who would not be a devotee of any idol worshipped by his parents and even other Yoruba gods.[12] A corollary oral report reveals that the prediction states that he would worship "Orisa Gambari" i.e. God of the Hausa people – Islam[13] which corresponds to the fact that he would not be a devotee of the religion of his parents – as earlier stated. His parents, however, did not heed the injunction of Ifa Oracle as they being Sango devotees, chose Sango, the god of thunder and lightening, for him to worship and gave him the name "Sangolami" meaning the god of Sango has a sign.[14] He was reported to have been named so because he folded his hand at birth holding a stone.[15]

As Oba Abibu Olagunju grew up, he developed a very strong and independent character. He showed hatred in the worship of Sango and did not join his parents in during so. Hence it was reported that against the express wish of his

parents, Oba Abibu Olagunju chose to abandon the worship of Sango and flee to Ilorin during the heat of Ilorin-Ibadan war at Osogbo in 1838 when it was considered terribly unsafe for people to leave their domains.[16] Another report however asserts that based on the prediction of Ifa-Oracle coupled with the refusal of young Oba Abibu Olagunju to worship Sango, his parents sent some people out to enquire about "Orisa Gambari" which Ifa Oracle predicted he would worship. These people therefore went to Ilorin and Bida and discovered Islam as the religion predicted by the Ifa Oracle. Two years later, when Oba Abibu Olagunju was between the ages of 10 and 12 years, he was sent to Ilorin to learn about his religion.[17]

One fact, which the above reports reveal is that Oba Abibu Olagunju, was at Ilorin to learn about his religion. On his arrival at Ilorin therefore, he discovered that he had to learn Arabic and Islamic Studies before he could be knowledgeable in the religion. He then started learning at Ilorin. His stay at Ilorin was however very brief. He later went to Sokoto, Kano, Katsina and later Bida to seek for knowledge about Islam and the *Sharī'ah*.[18] It was at Ilorin that he got his Muslim name – Abibu.[19]

Oba Abibu Olagunju stayed long at Bida where he met Nuhu Adekilekun (the great grand-father of Adekilekun family in Ede) with whom he studied as colleagues under the same teacher and later became friends. He was reported to have informed his friend that should he have the opportunity of becoming the Timi of Ede, he will invite him to be the Imam. He however left Bida later for Ilorin.[20]

An oral report has it that Oba Abibu Olagunju was asked by a person whether he was from a royal family which he confirmed. The person was said to be either his teacher at Bida or a soothsayer at Ilorin. The person however revealed to him that Oba's stool will be vacant in his town and he will be the next person to occupy it; hence he should go back home. This was how he returned to Ede.[20]

On arrival, Oba Abibu Olagunju was met with hostility even from members of his family because of his new faith. He was completely deserted and taken to a bushy isolated part of Ede with the intention that something would kill him there. When the second day he was visited and met there, they then said: "Abaa nigbe" meaning we met him in the bush. The place was since called Abangbe. It was at

this place he settled down to practice his religion and he built the first Jumat mosque at a place called Sooro.[22]

Oba Abibu Olagunju was crowned the Timi of Ede around 1855/1856.[23] It was his installation as the Timi that boosted the spread of Islam and the practice of *Sharī'ah* in Ede. Because he had imbibed the culture of Islam and was well schooled in the religion, he encouraged the practice of Islam and introduced the use of *Sharī'ah* in his domain. His Chiefs were enforced to put on turban in the palace.[24] Oyeweso summarises his efforts to Islam while on throne thus:

> under him, Islam was no longer a secret religion but the religion of State. It was the religion of the chiefs, the rich, the merchant, the powerful and influential men in the society.[25]

Oba Abibu Olagunju applied *Sharī'ah* in his palace on all matters brought before him for judgement. Oyeweso buttresses this as follows:

> One other noteworthy aspect of the Islamic policy pursued by Lagunju administration was the attempt to implement Islamic code of Law, the *Sharī'ah***,** as he understood it in the running of State affairs.[26]

Oba Abibu Olagunju therefore based his judicial administration in his domain on *Sharī'ah* Law applying it on all affairs without fear or favour as enjoined by Islam. He had the mind of using *Sharī'ah* to wipe out all forms of social vices in his domain, hence his administration, as Oyeweso observes, was particularly strict, hard and harsh on prostitutes, hoarders, burglars and thives.[27] He summarises the resultant of Lagunju's style of judicial administration thus:

> The end product of this style of administration was that Ede, under Timi Lagungu, became a crime free society.[28]

It is worthy of note that Oba Abibu Olagunju did not even spare his family from the *Sharī'ah* punishment when found guilty of it. Traditions had it that when one of his daughters commited *Zinā* (adultery), he ordered that she should be tried

under *Sharī'ah*. Based on the tradition of the Prophet where he was reported to have said:

> If Fatimah had been the one (as thief), it would have her hand cut off.[29]

Oba Abibu Olagunju ordered that she be punished according to *Sharī'ah*.[30] The order was carried out and the woman was stoned to death. This action of Oba Abibu Lagunju was considered cruel by some Ede people, particularly those who were not in support of the use of *Sharī'ah*; hence this was considered as of one the reasons why they plotted against him and later banished him from the town. It was their contention that if the Oba cannot spear his daughter from the punishment no other person would be speared.[31]

Oba Abibu Olagunju continued to apply *Sharī'ah* in Ede for a long time and was known for it. He was also known to have stopped idol-worship during his reign. As a result, the traditional drummers in the palace used to eulogise him with their talking drums thus:

Lagunju pana ebo patapata
O se gba ebo womuwomu

Meaning:

> Lagunju had extinguished the fire of idol-worship completely, he crushed it absolutely.[32]

It is because of the commitment of Oba Abibu Olagunju to Islam and particularly the application of *Sharī'ah***,** which Ede people assumed to have been too harsh on them, based on their level of understanding of Islam, that they plotted against him and frustrated him till he left Ede. Although, he came back to the throne but he was later dethroned. He was dethroned thrice before he finally left for Ibadan where he died and was buried in 1900.[33]

The exit of Oba Habib Olagunju did not bring an end to the application of *Sharī'ah* in Ede. Some traditions in the town reveal that the application of *Sharī'ah* in Ede can be classified into three phases. The first, being the period of Oba Abibu Olagunju. The second was the period of Oba Timi Oyelekan who ruled between 1899 and 1924 and the third was at the arrival of British Colonialists.[34]

The first phase, which was the period of Oba Abibu Olagunju as already discussed, brought about the application of *Sharī'ah* in the palace by the Timi himself as the *Qādi* – the judge. He applied *Sharī'ah* on matters brought before him for judgement in the palace. Capital punishments were said to have been pronounced by him on theft and adultery. It should however be mentioned here that some capital punishments, such as banishment of thieves by selling them into slavery or making them drowned in the Osun River and beheading of adulterers which were said to have characterized Oba Abibu Olagunju's judgements on cases of theft and adultery respectively were observed to have gone contrary to the punishments prescribed by the *Sharī'ah.*[35] While *Sharī'ah* prescribes amputation of hand for the former,[36] it recommends hundred lashes or stoning to death for the latter.[37] There is however a counter claim that the Oba adhered strictly to the punishments prescribed by *Sharī'ah*, but his enemies exaggerated his actions in order to blackmail him because of his commitment to the application of *Sharī'ah*.[38]

Nevertheless, Oba Abibu Olagunju's actions were seen to have been taken, to wipe out all forms of vices.[39] Oyeweso corroborates this while remarking the effort off Oba Abibu Olagunju to cleanse Ede of crimes thus:

> as a committed and zealous Muslim ruler, the Moral conduct of his administration was high and was implemented with remarkable zeal. His administration was particularly strict, hard and harsh on prostitutes, hoarders, burglars and thieves. For instance, he ordered a goat thief to be given some facial marks while many robbers were drowned alive in the Osun River. <u>The end of this style of administration was that Ede under Timi Lagunju became a Crime free society</u>.[40] (Emphasis mine)

Oyeweso also quotes Olunlade's statement to buttress his point thus:

> …… thus Timi Lagunju effectively checked all forms of stealing and burglary. If anyone was caught in the act of stealing, the Timi would sell him into slavery and would also sell members of his family. A few men having been made examples, all potential thieves were effectively checked.[41]

The second phase of *Sharī'ah* application in Ede, which was during the reign of Timi Oyelekan (1899 - 1924) came up outside the palace. It was a sort of a reactivation of *Sharī'ah* practice in Ede after the death of Oba Abibu Olagunju. His eldest son known as Daodu and named Ashiru Abibu Olagunju, returned to Ede from Ibadan and championed the course of re-establishment of *Sharī'ah* application. A son of Daodu named Mahmud Olagunju, who was knowledgeable, was appointed as the *Qādi*.[42] He was however supported by one Jinadu Alabi who served as the representative of Oba Timi Oyelekan in the Court. The registrar of the court was Abubakr Sindiku (Siddiq) Sobojeje from Ilorin who recorded the proceedings in Arabic.[43]

The Court was operated as a sort of customary court in a place called Agbeni and cases brought before them were adjudged according to the *Sharī'ah* while the court registrar recorded the proceedings in Arabic.[44] Apart from the Qur'an, *Risālah* of Imam Malik was said to be the major source of their reference book for their judgements.[45] This was in operation until the arrival of the British colonialists to the town. Tradition even has it that, the colonialists relocated the court to Onike-Olu in Agbongbe area of the town around 1914.[46]

It is to be noted here that it was on the basis of the operation of this *Sharī'ah* court that the compound where the representative of Oba, Timi Oyelekan – Jinadu Alabi lived was named as *'Ile-Kootu'* or *'Ile-Baba-Kootu'* i.e. Compound where court's man lives. This was because he went to the *Sharī'ah* court from the compound.[47] Another tradition has it that the recorder or court registrar also lived in this compound.[48] The compound is called *'Ile-Kootu'* or 'Ile Baba Kootu' till today.

The third phase of the *Sharī'ah* practice in Ede was the era of the colonialists. This phase also fell within the reign of Oba Timi Oyelekan. As earlier reported, the British colonialists met Ede people applying *Sharī'ah***,** and did not stop it immediately. They even relocated the court from Agbeni to Agbongbe in 1914. *Sharī'ah* was therefore in operation in the town even with the presence of the British colonialists till 1918 when they (the colonialists) abrogated it.[49] They succeeded in the abrogation because the people of Ede particularly the non-muslims showed their aversion to it because of their hatred for Habib Olagunju

who introduced it. Secondly, the Muslims themselves were not united on the issue. Hence, the British colonialists used that opportunity to abrogate it.[50]

3.1.2. *Sharī'ah* legal practice in Iwo before the colonial period

The practice of *Sharī'ah* in Iwo before the advent of the British colonialists cannot be separated from a Muslim monarch and patriarch of the period who championed the course. Oba Momodu (Muhammad) Lamuye of Iwo who was a practicing and devout Muslim introduced the application of *Sharī'ah* in his domain when he became the Oluwo of Iwo in 1858.

Oba Momodu Lamuye was not only one of the few Yoruba Muslim Obas of the 19th Century. He was also a practicing and zealous Muslim. He belonged to the tiny club of Yoruba political office holders who used their status to consolidate the position of Islam and allowed Islam to influence the conduct and practice of government. He is generally credited with laying the solid foundation which Islam enjoins in Iwo today. Today, Iwo is indeed reputed to be one of the most Islamic Yoruba towns.[51]

Oba Momodu Lamuye was one of the sons of Oluwo Ogunmakinde Anide (1820 - 1858).[52] When Anide's wife was pregnant, the Ifa oracle was said to have predicted that the wife had a Muslim male child in her womb. At the birth of the child therefore, he was named Muhammad (corruptly called Momodu) Lamuye by the resident Hausa scholars. Muhammad Lamuye was later put under the care of Imam Muhammad Hedeetha, who trained him and other children to become devout Muslims.[53]

On the death of Oluwo Anide, Momodu Lamuye succeeded his father. On assumption of the throne, while the onus of office expected Lamuye to maintain some balance between Islam and traditional faith, evidence showed that he leaned more towards Islam which had been predestined for him. He became not only a practicing Muslim but also a devoted and pious one. By his practice and devotion to Islam, he became a symbol of inspiration to the waivers while he also encouraged many of his citizens and chiefs to embrace Islam.[54] This is buttressed by the assertion of Akinyele, the respected historian of Ibadan, quoted by Oyeweso as follows:

> gbogbo awon Ijoye re fere ba a kirun tan….. (Virtually all his chiefs observed the Salāt (ritual prayer) with him).[55]

It is pertinent to mention here that, based on the zealousness of Oba Momodu Lamuye for Islam, he was compelled to introduce the application of *Sharī'ah* during is reign as Oluwo of Iwo in his domain. Traditions in the town reveal that Oba Lamuye was convinced that Islam has to be practiced in totality. Hence, no aspect of the religion should be left undone. The judicial aspect should also be implemented. Therefore he introduced *Sharī'ah* to cater for the judicial aspect of Islam.[56]

At the introduction of the *Sharī'ah* system, Oba Momodu Lamuye endeavoured to deflect his judicial power to the *Qādi*.[57] Unlike Lagunju of Ede, who arrogated the judicial power of *Sharī'ah* to himself, Oba Lamuye tried to relieve himself from the judicial matters. He seemed to have separated the judiciary from the executive by appointing a *Qādi* (judge) to oversee *Sharī'ah* cases. This might have been done probably because he was not capable of overseeing *Sharī'ah* matters and wanted a competent and knowledgeable person to do it. However, the action was commendable for it allowed for justice and fairplay.

Oba Momodu Lamuye appointed Muhammad-al-Awwal Akintayo Omojiiro as the *Qādi* and gave him a separate place within the palace to be used as *Sharī'ah* court.[58] Therefore, the first *Qādi* was the person mentioned above. He was however succeeded by his son – Salman Akintayo.[57] Tradition has it that about three judges succeeded one another, the last being Alfa Nasiru of Opaaba's Compound.[60]

Apart from the first *Qādi* who was said to be alone in the *Sharī'ah* court as the judge as well as the recorder, recording in Arabic, his son who succeeded him was reported to have got some officials who assisted him in discharging his duties.[61] Oral report also reveals that the last *Qādi* – Alfa Nasiru of Opaaba's Compound was not the only one in the *Sharī'ah* court. Although he was the *Qādi* (judge), he was assisted by about five other persons among whom, was the recorder, who recorded the proceedings in Arabic. The recorder was believed to have come from Ilorin.[62] It was also reported that the sitting of the Court was transferred from the palace to a Local Court at Oja-Oke in Iwo during the time of

this last *Qādi* and it was this last set that the British colonialists met and abolished later.[63]

The *Sharī'ah* court used the Qur'an and *Risālah* of Imam Malik as their reference books for delivering judgements of cases brought to the court, while the recorder, who served as court registrar, recorded the proceedings in Arabic.[64] Various cases, including theft and adultery were said to have been brought to the court while appropriate punishments according to the *Sharī'ah* were reported to have been awarded.[65]

There are, however, two points that could be raised as evidences to buttress the fact that criminal cases like theft and adultery were handled by the *Sharī'ah* court in Iwo at this period. First, there were some terms and slangs that were noted to have been used in the court for one offence or the other. These are: *'Amrun'azī mun* (أمر عظيم) and *'Aghlalān* (أغلالا). The former is used when an accused was alleged of a criminal offence and was found guilty of the offence and the latter is used when a jailed term was pronounced on an accused. The last *Qādi* was reported to have been accustomed to these slangs in his judgements.[66] Therefore this shows that criminal cases were handled by the court.

Secondly, there was a traditional song found to be always sung by Iwo people during this period which actually testified to the fact that *Sharī'ah* was applied in Iwo and criminal cases were addressed there. It goes thus:

Ma ma da mi lebi, gasa
Ko je da mi lebi, gasa
Are ni ko da mi, gasa
Are ni ko da mi
Alikali baba n seria
Are ni ko da ni

Meaning:

Do not find me guilty
He will never find me guilty
Find me not guilt
Find me not guilty
Alikali (the judge) the father
In charge of *Sharī'ah*
Find me not guilty.[67]

It is significantly relevant to mention here that the compound of the first and second Qadis is addressed as 'Ile-Alikali' i.e. Alikali's compound up till today because the first two Qadis came from there. The actual name of the compound is 'Ile Omojiiro' which is also known as 'Ile Ikoyi.[68] It is therefore undoubtedly impossible to divorce the roles played by these Qadis in the application of *Sharī'ah* from the name 'Alikali' given to their compound. Doi therefore expresses this correctly when he says that one also finds several families living in various parts of Yorubaland which are identified as 'Alkali' families because their ancestors were at one time the *Sharī'ah* court judges.[69]

From the foregoing, it is evidently clear that *Sharī'ah* was applied in Iwo before the arrival of the British colonialists to the town. Its application in the town commenced during the reign of Oba Momodu Lamuye who was the first Muslim Oba of the town and continued till the arrival of the colonialists who used all powers at their disposal to abrogate it in order to promote their own law. Moreso, the *Sharī'ah* applied in the town at this period was not restricted to the law of personal status, it covered the criminal aspect of the system as expantiated in our earlier discussion.

3.1.3. ***Sharī'ah*** **legal practice in Ikirun before the colonial period**

In an attempt to discuss *Sharī'ah* practice in Ikirun, certain points need to be made. It is a fact that the introduction of *Sharī'ah* practice in the town was initiated and commenced during the reign of Oba Aliyu Oyewole who was the first Muslim Oba in the town. However, its application was not restricted to him. It was also applied during the reign of his son, Abdul-Qadr Oyewole, popularly known and called Akadiri. Therefore *Sharī'ah* practice in Ikirun, according to our findings can be divided into two phases. The first phase came up during the reign of Oba Aliyu Oyewole while the second one was witnessed during the reign of his son, Akadiri who resuscitated the application of *Sharī'ah* in the town.

Earlier findings of *Sharī'ah* practice in Ikirun seem to have mixed up some issues. For example, as much as the information about the first Oba to implement *Sharī'ah* in the town was correct, issues relating to date and the second phase of

implementation were mixed up. Our findings have however made some of these issues clearer as we shall see in our discussion.

Islam received a great boost in Ikirun during the reign of Oba Aliyu Oyewole who reigned between 1795 and 1820. Earlier before he ascended the throne, the presence of Hausa people, Kolanut traders had been noticed in the town and this suggests that there had been some elements of Islamic influence in the town before it was officially introduced by Oba Oyewole.[70]

A report had it that at a particular time there was a dispute among the ruling families on who was to become the king and Oyewole who was a member of the ruling class left for Ilorin in order not to be affected adversely. He stayed in Ilorin where he became a Muslim and learned Arabic and Islamic Studies. With this aspiration, the people of Ilorin had more interest in him. By the time he decided to return home, he informed the Ilorin people that he was interested in the Obaship of Ikirun and requested for their prayers and support. They supported him through prayers in Islamic way while some even followed him to Ikirun.[71]

The prayers offered for Oyewole at Ilorin were answered as he eventually became the Oba of Ikirun and was installed in the Islamic way. The coronation was reported to have been performed by the Emir of Ilorin who turbaned him as the new Akirun of Ikirun. He then became the first Yoruba Oba who used turban on throne.

As he ascended the throne, he used his influence for the spread of Islam in the town. Hence, many indigenes of Ikirun embraced Islam at his instance. He sent his children including his first son, Abdul-Qadr to Arabic and Islamic Institutions in Ilorin while many people in Ikirun followed suit.[72]

Oba Aliyu Oyewole was a strong supporter of Islam in all its ramifications in Ikirun. Due to his support for Islam and the Muslims in this area, Okunola asserts that he probably went further than any of the Yoruba Muslim Obas so far as he was popularly eulogised in his Oriki as a friend of Muslims and a helper of Muslims.[73] Based on his interest and love for Islam coupled with his belief that Islam should be wholeheartedly practiced–*Kāfatan*, he introduced Islamic judicial system known as *Sharī'ah* in his domain and started to judge according to it.[74]

Being someone who had got the rudimentary knowledge of *Sharī'ah* matters during his days at Arabic and Islamic School in Ilorin, Oba Aliyu Oyewole was said to have used his palace for cases and presided over them as the *Qādi*, the judge. He was also found to have atimes used an open place near the palace to give his judgement. He used to sit on a rock very close to the palace and near the first central mosque at Oja-Oba, surrounded by his chiefs and the *Sharī'ah* judgements were given by him. All cases including criminal ones were treated under him and necessary judgements according to the *Sharī'ah* were delivered.[75]

The reign of Oba Aliyu Oyewole (1795 - 1820) witnessed the introduction of *Sharī'ah* in Ikirun and its application continued unabated until another Akirun came on the throne and discarded the application of *Sharī'ah*. The reign of Oba Aliyu Oyewole therefore served as the first phase of *Sharī'ah* practice in Ikirun.[76]

The second phase of the *Sharī'ah* practice in Ikirun came up during the reign of Oba Oyinlola Akadiri, the son of Oba Aliyu Oyewole. Oba Oyinlola Akadiri reigned between 1887 and 1914. Being a devout Muslim like his father, he resuscitated the application of *Sharī'ah* in Ikirun when he ascended the throne.[77]

The re-introduction of *Sharī'ah* application in Ikirun by Oba Akadiri brought about some changes. Unlike his father who was the *Qādi*, Oba Akadiri appointed somebody as the *Qādi*. The man appointed as the *Qādi* (judge) was one Alfa Inda Salih, who was either from Ilorin or Nupeland.[78] He was also known as Labaeka according to the Chief Imam of Ikirun[79] and also referred to as Bako according to the report of Okunola.[80] He was however, assisted by some Alfas of the town particularly Alfa Salahudeen Ajanasi who served as the recorder of the proceedings which were recorded in colloquial Arabic.[81]

Oba Akadiri allowed the re-introduction of the *Sharī'ah* to commence at his palace as a court but later gave them a place outside his palace to be used as *Sharī'ah* court. The court was situated in an area called Tumi, (now called Oyedokun, Station Road) Ikirun. It was this court that the colonialists met and later converted to a customary court.[82]

The *Sharī'ah* court used to listen to various cases brought before it including criminal ones. This court decided upon offences relating to theft and murder. It was even remarked that a place known as *'Oke-Olooru'* had been

prepared for offenders found guilty of murder and death penalty was pronounced on them. Sharpened trees were said to be prepared at this place where the offenders were hung. 'Oke-Olooru' as it was called then has now been changed to Iyaganku where police headquarters is situated in Ikirun.[83]

The scope of *Sharī'ah* application in Ikirun at that period did not leave out the issues of divorce, inheritance and land-dispute. Cases of *Zinā* – adultery were also determined in the Court and those found guilty were given hundred lashes of cane according to the *Sharī'ah*. This seemed to have been the reason why it became the custom of the people of the town in those days to make reference to *Sharī'ah* punishment on *Zinā* as a means of cautioning intending culprits.[84]

The *Sharī'ah* practice continued to be in operation in Ikirun during the reign of Oba Akadiri until the British colonialists arrived at the town and introduced their own Law. They did not torch *Sharī'ah* initiality but restricted it to the interested Muslims only. Gradually, they discouraged people from going to the *Sharī'ah* court and lured them into going to customary court. Eventually they abrogated the application of *Sharī'ah* in the town.[85]

3.2. ***Sharī'ah* application during the colonial era**

Our discussion so far has shown the extent for which *Sharī'ah* legal system had been in operation in some parts of Yorubaland particularly our area of study (the present Oyo and Osun States) before the arrival of the British rule. Abdullah refers to Crowder as saying that Lagos, the first capital of Nigeria, was occupied by the British forces in 1861 while they occupied the North in 1900, even though, the birth of the present Nigeria came to life in 1914 when the two protectorates of Northern and Southern Nigeria were amalgamated by Sir Frederick Lugard.[86]

Earlier before 1861 when the British forces arrived at Lagos, *Sharī'ah* legal system had been practiced in some towns in Yorubaland as already mentioned. It had therefore started to receive gradual patronage in some other parts of Yorubaland when it was forestalled by the arrival of the British Colonialists. Unlike the Northern Nigeria where the *Sharī'ah* legal system was firmly rooted into their judicial system and the British rulers found it extremely difficult to

disenfranchise, the *Sharī'ah* in the Southern part, particular Yorubaland had a serious blow from the British Government.

As Islam acquired the increasing political influence in Yorubaland especially from the end of 19th century, the next stage of development that could be expected was the introduction or rather extention of Islamic system of law (*Sharī'ah*) into various remaining parts of the Yorubaland to achieve a *de jure* Islamic state. But this stage of legal development of Islam in Yorubaland was to be forestalled, with the rise in the 19th century of Christianity and establishment of British rule - two important forces which posed problems to Islam and Islamic Law (*Sharī'ah*) and checkmated their influences.[87]

Okunola, as mentioned above, identified two major forces that checkmated the spread of *Sharī'ah* in Yorubaland during the colonial era. The first, being Christianity. He explains that Christian endeavour was aided directly or otherwise by British rule and the British might behind the force of Christianity proved adverse to Islam and *Sharī'ah*.[88]

While analyzing the effect of the British might behind Christianity against Islam and *Sharī'ah*, Okunola refers to the opinion of a researcher (E. A. Ayandele) in the area of early Christian missionary work in Yorubaland who described the Christian missionaries as 'pathfinders of British influence, the people who prepared the way for the Governor, exploiter and teacher.[89] In exchange, Christian missionaries were promised completed legal protection, assistance and encouragement in some treaties signed between the British and Local Chiefs in some parts of Yorubaland. Apart from these specified legal protection in the treaties, occasionally, a few top government officials would throw in their influence and in addition the Christian missions often tried to take advantage of the British 'pacification' of the country to extend their work of evangelism.[90]

In spite of the British might behind Christianity, the Muslims still retained their stronghold in many places, thus rendering Christian efforts futile. However, the Christian mission later resorted to the school, as an enviable magnet to attract the Muslims to the Christian way and outlook. It will be recalled that at the initial stage, the Muslims developed apathy to this Christian sponsored western education because it was perceived by them as bait designed to lure Muslim children from

the straight path (Islam). It is this belief that commended the Qur'anic schools to them as against the Christian sponsored western education. The fear of the Muslims was later justified by the conversion of some of their children in the Christian schools.[91]

It is to be noted, however, that the early apathy to western education was a loss to the Muslims for the educated Christians aligned with the British Colonial officials to block and checkmate the growth of Islam in general and Islamic Law (*Sharī'ah*) in particular.[92]

The second major force that checkmated the spread of *Sharī'ah* in Yorubaland as earlier mentioned was the establishment of the British rule. Islam faced a great potential threat under the new era of British rule. Paradoxically, this threat issued from the establishment of native councils and courts formed the bedrock of the British administration. By this, it is meant that the principle of government according to native law and custom was meant to apply to all including Muslims in Yorubaland. Consequently, the Muslims' move for the establishment of Islamic Law (*Sharī'ah*) in other centres of Yorubaland was thwarted by the primacy of this fundamental principle of British administration.[93]

The effect of the supremacy of the native council and courts on Islam as well as Islamic Law (*Sharī'ah*), according to an expert on Islamic history which Okunola quotes, was summarized thus:

> thus the politico-Legal development of Islam in Yorubaland was in a way effectively threatened, though rather unintentionally and the establishment of native councils and courts marked the beginning of the loss of political power by Islam… This point will be appreciated further when it is realized that the native councils and courts and the principle of native law and custom, were part and parcel of British rule in Nigeria. It was all part of that 'era of colonial rule' (Yoruba: Aye-Oyinbo), one of the unintended bye-products of which was the part deprivation of Yoruba Islam of the opportunity for full political and legal developments.[94]

It is little surprising that this checkmating of Muslim politico-legal influence later had wider repercussions on Islam and *Sharī'ah* in Yorubaland since

the chief stimulus to their growth in Yorubaland had been their possession of political influence. For example the Lagos Muslims in 1894 decided to forward a petition to the British Colonial Government, praying for the establishment of Islamic Court in Lagos colony. Their aim was that they would want to be "judged in regard to their civil rights and grievances according to the law and usages of their own faith".[95] Their petition was not given any favourable consideration. Therefore their request for *Sharī'ah* courts was jettisoned. It is also on record that Lagos Muslims submitted another petition in 1923.[96] Moreover, the Ibadan Muslim Community was also reported to have requested for the application of *Sharī'ah* from the British Government in 1938 but was refused.[97]

It is to be remarked here that it is also on record that in 1948, the Muslim congress of Nigeria with its headquarters in Ijebu-Ode complained to the Governor of Nigeria in writing, on behalf of Muslims in the South, of the violation of their fundamental human rights as Muslims living in the South where they were subjected to common law. The Congress also submitted a memorandum to the Brooke Commission of Inquiry headed by Mr. Justice Brooke, Chief Justice of Nigeria. The memorandum called for the establishment of Muslim courts in the South. The Muslim petitioners complained that more than four thousand divorce cases involving Muslims were arbitrarily handled while the Muslim couples were separated 'like dogs'. They pleaded further:

> We, therefore, pray this Commission to grant our request for a separate Muslim court. The condition of our courts is even worse in the case of the law of inheritance. Our native Authority civil court that grants letters of administration does not know any Muslim Law governing this matter.[98]

While stating the reason why the British Government rejected the petition of the Lagos Muslims, Okunola asserts that "the reason for the rejection of the petition of the Lagos Muslim in 1894 'that they should be ruled and judged in regard to their civil rights and grievances according to Islamic system of Law and Justice' will now become clearer, when viewed against the British policy of 'the principle of government according to native law and custom which was meant to apply to all, including Muslims'. This message of the colonial government in 1895

was clear in its effects on the political as well as the legal development of Islam in Yorubaland were final. Thus, the further growth of Islam and the introduction of Islamic concepts of government were precluded and undermined. And finding it a little difficult to play any significant public political or legal role, Islam was to restrict itself largely to the personal aspects of life."[99] No wonder, the rejection of the request of the Lagos Muslims on *Sharī'ah* of 1894 and 1923 was extended to that of Ibadan Muslims of 1938 as well as that of the Muslim congress of Ijebu-Ode in 1948.

It should however be noted at this juncture that a very important effect of this British colonial administration of promoting customary law was its reflection in its judicial administration. Apart from the fact that only ethnic customary rules applied, the superior courts perpetuated the supremacy of the customary law over the established Islamic law in most of their judgements.[100]

Based on the above premise, the customary courts were given recognition in Yorubaland at the expense of the *Sharī'ah*. The British Government used its might to enforce customary law in all places in Yorubaland. This affected the practice of *Sharī'ah***,** which had started in some places in Yorubaland. It will be recalled that we have earlier mentioned that the British rule met *Sharī'ah* legal system in Ede, Iwo and Ikirun. It was the British principle of Government according to native law and custom, which was meant, to apply to all, including Muslims that led to the gradual scrapping of *Sharī'ah* courts in these towns. This is why Akintola remarks that "like a fox in the court-room, the British imperialists curtailed the application of Islamic Law via repugnancy and validity tests. They created Area Courts to replace *Sharī'ah* Courts".[101]

However, in the more Islamised central zone of Yorubaland, (Iwo, Ede and Ikirun inclusive), Muslim leaders and scholars appeared to have continued to determine in mosques and scholars houses a wide range of issues including inheritance on the basis of *Sharī'ah.* This procedure was unofficial and limited. However, the Muslims did not relent in their demand in spite of the official stand of the colonial government. The demand, according to Okunola, even led to a number of court cases right up to 1960s some of which were pursued to the highest court of the land.[102]

3.3 Post colonial experience of *Sharī'ah* application

As already mentioned, the British administrators used their might to subject *Sharī'ah* to a private matter in Yorubaland. With the abolition of some few *Sharī'ah* courts in some towns, the cases hitherto adjudged in the courts were unofficially taken to the mosques for consideration. Thus, the influence of *Sharī'ah* legal system was prevented from further growth in Yorubaland.[103] As this situation remained during the colonial period, what therefore became of *Sharī'ah* after the departure of these colonial master in Yorubaland is what we intend to discuss here.

It will be recalled that Nigeria attained independence in 1960. It was at this period the colonialists were assumed to have relinquished the administration of this country. The experience of *Sharī'ah* in Yorubaland after the colonial era therefore requires our attention too.

We should draw our minds back to the fact that the British colonial rulers had relegated *Sharī'ah* legal system to a private affair, dismantled and abolished the *Sharī'ah* courts in some towns in Yorubaland. Moreso, they introduced the principle of Law according to native law and custom which was applied to all, Muslims inclusive. The *status quo* however remained since the exit of the colonial rulers. The reasons for this are not far fetched. First, the British administrators had planted their law and would not want it uprooted. Second, the people at the helm of affairs in Yorubaland then were chronic enemies of Islam and *Sharī'ah* and thirdly, the Muslims themselves were not united while many were ignorant of the doctrines of their religion (Islam).

Based on the third reason above, Gbadamosi notes that in the first two decades after the attainment of independence, the Southern Muslim (particularly Yorubaland) were apparently very pre-occupied with some pressing issues which on the face of it would appear not directly related to the issue of *Sharī'ah* but which were later to prove of great import for the cause of *Sharī'ah*. Only two are however mentioned by him. According to him, the first one borders on the pre-occupation with the forging of unity among the Muslim ranks while the second one was the issue of acquisition of knowledge.[104]

The above notwithstanding, there were some Muslim individuals, scholars, leaders and associations that were resolute about the course of *Sharī'ah*. They

therefore applied *Sharī'ah* unofficially on matters relating to *Nikāh* – marriage, *Mī rāth* – inheritance and *Talāq* – divorce either in their mosques, private homes or in their associations. Apart from this, some groups of Muslims saw it necessary to continue with the demand from the government to allow them to operate *Sharī'ah* legal system by establishing *Sharī'ah* courts in Yorubaland. To them, it is only *Sharī'ah* that could liberate man from servitude to other than Allah, and that *Sharī'ah* and Islam are juxtaposed, inseparable and symbiotic. Removing *Sharī'ah* from a Muslim amounts to taking away Islam from him.[105]

On the above premise, some Muslim groups mounted the campaign for the establishment of *Sharī'ah* courts in Yorubaland. One of such groups was the National Joint Muslim Organisation of Nigeria (***NAJOMO***), which was an umbrella body of some Muslim organizations in the South. This body, at its meeting held on Saturday, 7th February, 1976 at the Central Mosque, Ibadan, comprising accredited representative of the Muslims from Ogun, Ondo (Comprising the present Ekiti) and Oyo (Comprising the present Osun) states decided to address a prayer or petition to the Constitutional Conference for the establishment of *Sharī'ah* Courts in the Southern parts of Nigeria.[106]

The prayer was consequent on the decision the body took to consider its stand about the issue of constitutional review that the then military government had undertaken. It decided to draft a prayer to the Committee, urging on it, the views of all the Muslims from Ogun, Oyo and Ondo states. The thrust of their petition was dual. One, they wanted constitutional provisions that would enable any group of Muslims anywhere in Nigeria "to regulate their affairs by their religious law (the *Sharī'ah*); two, they wanted "*Sharī'ah* Courts established in Ogun, Oyo and Ondo States in such numbers as the Muslim population in the respective states warrants."[107]

Apart from the above, in the memorandum to the members of the Constituent Assembly on the *Sharī'ah* in the draft Constitution jointly signed by Mr. Dawud Olatokunbo Shittu Noibi and Dr. Sayed 'Tunde Malik of the Department of Arabic and Islamic Studies, University of Ibadan in February, 1978, the need for the establishment of *Sharī'ah* courts in the southern part of the country was stated.

It was made abundantly clear in the memorandum that *Sharī'ah* court should not be restricted to the Northern States. For contrary to the erroneous view

held by most people that *Sharī'ah* had been confined to the North, there is abundant evidence of the influence of the *Sharī'ah* among the Yoruba. They cited various instances to buttress their point. They asserted further that 'the Muslim in the southern part of this country have not been indifferent to the issue of the *Sharī'ah*. In fact they have been increasingly disturbed by apparent government disregard for the *Sharī'ah*. And it is reassuring that they are now, far more than ever, conscious of their right to it and are determined to assert that right".[108]

It is significantly important to mention, at this juncture, the efforts made by late Chief M.K.O. Abiola in the 1980s on the course of *Sharī'ah* in Yorubaland. He was actually one of the greatest advocates of the *Sharī'ah* at this period. He championed the course of the *Sharī'ah* with great zeal almost every where he went calling for the establishment of *Sharī'ah* Courts in all states of Yorubaland. It is also noted that the League of Imams and Alfas in, Lagos, Ogun, Oyo and Ondo States, in May, 1984 called for the establishment of *Sharī'ah* courts in Yorubaland.[109]

Moreover, the Muslim Student Society of Nigeria did not fail to call on the Federal Military Government to establish *Sharī'ah* Courts in the Southern parts at this period. Also, the organisation of Muslim Unity (OMU) at a Muslim interdenominational one day seminar on *Sharī'ah* held on 13th of October, 1984 passed a resolution calling on all Muslim organizations to appoint a committee for the sole purpose of demanding for *Sharī'ah* in Southern Nigeria. It also recommended the establishment of the National Committee on *Sharī'ah*.[110]

The above recommendation of OMU led to the composition of the National Committee on *Sharī'ah* for the sole aim of demanding for *Sharī'ah* in southern Nigeria. The committee then took up the responsibilities of enlightening the Nigerian Public at large on the *Sharī'ah* as part of the universal legal system. It built up a wide range of literature in its weekly writings in the National Concord on *Sharī'ah*. They organised lectures, symposia and other open activities to bring *Sharī'ah* to the doorstep of the Muslims to whom *Sharī'ah* is addressed. They also enlightened the non-Muslims alike, at least, to clear the misconception associated with the *Sharī'ah*.[111]

From the foregoing, it is clearly shown that the Muslims in the southern part continued to demand for the establishment of *Sharī'ah* Courts in their areas since the departure of the Colonial rulers. The situation has continued like that till

this period. This situation not withstanding however, some Muslim groups had continued to apply *Sharī'ah* unofficially among themselves. Our discussion will later focus these groups so as to assess how they have put *Sharī'ah* into practice in their private affairs.

3.4 Independent *Sharī'ah* implementation in Oyo State

The official launching of *Sharī'ah* in Zamfara State by Governor Ahmad Sani Yerima on 27th of October, 1999 sparked another serious demand for the introduction of *Sharī'ah* in Nigeria including Yorubaland. The Oyo State Muslims had since then started meeting under the aegis of Islamic Co-ordination Council to fashion out how Oyo State can join the league of *Sharī'ah* States in Nigeria. A case for the establishment of *Sharī'ah* courts for the implementation of the civil aspect of *Sharī'ah* was made to Oyo State Government.[110] In fact, a private Bill was presented to the Oyo State House of Assembly for the introduction of the Civil aspect of *Sharī'ah* in Oyo State but all to no avail.[113]

When all efforts to persuade Oyo State House of Assembly to consider the Private Bill for the establishment of *Sharī'ah* Courts in Oyo State to adjudicate on civil matters of marriage, divorce, inheritance, succession, and land disputes proved abortive, the Muslims of the State opted for a non-governmental option. It is as a result of this that Oyo State Independent *Sharī'ah* Implementation Panel was launched at the Central Mosque, Ibadan on Wednesday, 1st of May, 2002. The panel consists of Islamic erudite scholars and intelligentsias of high moral integrity to sit on civil matters mentioned above and other social matters that have no criminal dimensions.[114]

Some of the hopes for establishing the Independent *Sharī'ah* Implementation Panel, according to the Chairman of the organising Committee of the Launching, Alhaji Ishaq Kunle Sanni, include assisting in reducing the rate of divorce among Muslims because the Islamic system of adjudication for instance has safety valves for settling disputes among couples and is less interested in dissolution of marriages. Secondly, the reconciliatory opportunity which *'Iddah* period provides as well as allowance which it gives for determining pregnancy within the three months make it impracticable for a woman to carry the husband's baby to a new husband. Hence, it curbs the dilemma which Muslim couples are put

in the hands of judges who are not learned in the *Sharī'ah* by dissolving marriage contracted in the mosques under the *Sharī'ah*.[115]

Even though the Oyo State Government did not consider the private Bill for the establishment of *Sharī'ah* courts in the State, the Government was adequately informed before the launching of the Independent *Sharī'ah* Panel for the State.[116] The panel however swung into action immediately after the launching and commenced sitting at the Arisekola's Mosque, Iwo Road, Ibadan. The panel comprises of erudite Islamic Scholars who are well versed in *Sharī'ah* law to serve as judges. The few judges appointed include the following:

(i) Shaykh Ahmad Tiamiy Olawale
(ii) Shaykh Abdur-Razaq Akuru
(iii) Shaykh Zakariyah Abdul-Qadir
(iv) Shaykh Abbas Zakariyah
(v) Shaykh Abdullah Adedeji
(vi) Shaykh Isma'il Tiamiy[117]

We were made to understand that there is an appellate body called *Majlis-Shūra* where unsatisfied judgement between disputants will be appealed to. It also serves as a forum where issues on the Independent *Sharī'ah* Implementation Panel will be addressed. These include appointment of more qualified judges, proffering solutions to problems and reviewing of cases handled by the judges. Members of this body include Shaykh Abdul-Wahab Bayo Ahmad, Alhaji Kunle Sanni, Barrister Abdur-Rahim Bayo Shittu, Alhaji Abdul-Wahid Rufai and Some others.[118]

Within a very short time of sitting, many cases had been brought to the panel bordering on divorce and dispute. While some cases had been heard, some were still pending as at the time this research was carried out. We were informed that considering the way people trooped to the court which had led to many cases pending, effort was being made to decentralize the panel by creating another one at Oja-Oba Central Mosque with a view to having Courts I and II at Abdul Azeez Arisekola mosque and Central Mosque Oja-Oba respectively. These two places are being used pending the time Independent *Sharī'ah* court building will be provided.[119]

With this temporary arrangement, some court clerks were appointed to take cases to be presented before the judges and record same when judgments are

passed. Necessary furniture were also procured to be used in the courts and offices. For now, only the clerks are remunerated while the judges render their services voluntarily (Fi sabili llah). However, they are expected to be remunerated in future when everything must have taken proper shape.[120]

While analyzing the cases handled so far, one of the judges, Shaykh Ahmad Tiamiy Olawale stated that, as at the period of the interview, they had handled more than six cases while more than five cases were pending. According to him, majority of the cases were matrimonial and few cases, about two, were settlement of disputes on indebtedness. The two cases of indebtedness which occurred among two persons and an owner of an establishment and his workers were amicably settled amongst the concerned.[121]

On matrimonial cases however, three of such cases were reported to have been concluded. Since reconciliation cannot be attained among the couples, they have been dissolved and the women concerned placed on '*Iddah* for three months after which final dissolution notice was given. However, there were three other cases which had not been finalized because the women involved were undertaking their menstration and it is disallowed under the *Sharī'ah* law to dissolve marriage when a woman is in her menstrual period. This is called *Talāq bid'a*. Therefore, such cases will be deferred under *Sharī'ah* Law until the completion of menstruation when divorce procedure will now take place. These were the divorce cases previously mentioned as being deferred.[122]

Presently, the court seats every Thursday between 10.00a.m and 2.00p.m at the Central Mosque, Oja-Oba, Ibadan. The sources of reference of the judges are the Qur'an, Hadith and the precedents or opinions of the early Islamic Scholars and Imams.[123]

3.5 Osun State committee on *Sharī'ah*

The Osun State Muslims were geared up after the official launching of *Sharī'ah* by Governor Ahmad Sanni Yerima of Zamfara State. Series of lectures, symposia and rallies were held either privately or publicly demanding for the establishment of *Sharī'ah* courts in the state. The symposium organised by the National Council of Muslim Youth Organisations, (NACOMYO) Osun State Chapter on *Sharī'ah* titled "Constitutionality of *Sharī'ah*: Problems and Prospects" held on 30th January, 2000 seemed more educating and challenging. Hence, many

Muslim individuals became more aware of the need to demand for the establishment of *Sharī'ah* courts in the State.

As a follow-up to this one day NACOMYO seminar on *Sharī'ah*, a meeting of like-minds from different callings, societies and background living within or outside the state but who are indigenes of Osun State was called. The meeting was held on Sunday 26th of March, 2000 at NACOMYO Secretariat, Ola-Ore Estate, Osogbo, where Osun State committee on *Sharī'ah* took off. Among the resolutions made at the meeting are:

(i) that *Sharī'ah* court of Apeal be demanded for in the state;

(ii) some individual Muslims who would be useful in the struggle be identified from each Local Government Area and be invited to the Committee's meetings;

(iii) some Muslim scholars and Alfas who would be in support of the course be identified and carried along.[124]

Consequently, a number of meetings were held to map out strategies and plans. These include:

(i) sensitising all Muslims in the State of the need to demand for *Sharī'ah* courts for Osun State through the members of the committee drawn up from each Local Government Area;

(ii) setting up of consultative forum comprising of some Islamic Scholars and Alfas in the state to serve as a link between the committee and the Imams. The Forum then set-up a sub-committee headed by Shaykh Salahudeen Olayiwola of Ede who went to some eminent Imams in the state on this mission and their reports showed that they were favourably disposed to it and were ready to support the course any time it is moved;

(iii) setting up of sub-technical committee comprising some Muslim lawyers and Islamic Scholars to critically appraise the constitution vis-à-vis *Sharī'ah* issue and suggest ways through which the matter will be constitutionally tackled.[125]

The above committee continued with its meetings and activities in the state. However, with the emergence of the Osun State Muslim Community which holds its meetings monthly, the committeee decided to submit its report of activities to the Osun State Muslim Community which it did in the meeting of 21st of July,

2002 at Ansar-udeen Mosque, Sabo, Osogbo. With the submission of the report, the meeting resolved to look into it with a view to taking appropriate actions. It also resolved to look at the possibility of establishing independent *Sharī'ah* implementation as done in Oyo State to forestall possible drag footing of the State Government.[126]

In view of the above, Osun State Muslim Community started to mobilise the Muslims in the state and sought for their support on the move to establish the Indepentent Shari'ah Panel in the state. The League of Imams and Alfas in the state were consulted too. Its leadership supported the idea and promised to give necessary assistance to make it a reality. Islamic organizations in the state were also carried along in the plan. It was planned that the panel comprising knowledgeable individuals in *Sharī'ah* will be set and inaugurated as the Osun State Independent *Sharī'ah* Panel.

3.6 The Bamidele Movement of Ibadan and *Sharī'ah* practice

The Bamidele Movement is a reform movement based in Ibadan. The Movement has spread its tentacles into many parts of Yorubaland as well as throughout Nigeria and to places like Togo, Dahomey, Ghana, Ivory Coast and Cameroon.[127] The founder of the movement was Alfa Abdus-Salami Bamidele Bada from whose name, Bamidele movement was derived. The real name of the movement is *Zumratul-Mū minī n*.

Alfa Abdus-Salam Bamidele Bada was born at Amunigun in Ibadan in 1910.[128] His father Bada came from Iyin Ekiti in Ekiti State to settle at Ibadan as a farmer. Bamidele's father was a Christian and was a member of Baptist Church, Idikan, Ibadan. Bada married Ibironke, a Muslim lady from Gbalasan Compound, Oke-Aremo, Ibadan. Although Bamidele was from a Christian family, he became a Muslim through his father's aunt, Zaynab Abegbe who was a Muslim and who adopted him from childhood and gave him the name Abdus-Salam.[129]

After having his primary education which he stopped at standard four, he started to attend Qur'anic school under Alhaji Muhammad Bello Alebiosu, a native of Ogbomoso. There, he spent three years. Having completed the rudimentary education of the Qur'an, young Abdus-Salam went for further Islamic training under an able teacher, Alfa Yusuf Agbaji, a native of Ilorin. Bamidele studied the

Fiqh (Islamic juriprudence), the *Hadīth* (Traditions or the Prophet) and *Tafsīr* (Exegesis of the Qur'an) under him. He traveled with his teacher to different parts of the country, including Ilorin, Lagos, Abeokuta and Ijebu. This afforded him the opportunity of meeting Muslim scholars from different parts of the world including one Muhammad Fahham, a Muslim scholar from Egypt. Bamidele completed his Islamic training after seven years.[130]

On completion of his studies, Bamidele set-up his own *Madrasah* - Arabic School in his house at Amunigun, Ibadan. No sooner was the Arabic school founded that it began to flourish. The number of pupils increased daily and there was never a time when he had less than fifty in the Arabic School. He had educated thousands who in turn founded their own small Arabic schools.[131] As soon as he opened his Arabic School; he started to inculcate into his pupils certain doctrinal teachings which he considered true Islamic doctrines.

There was no any formal way employed by Bamidele in establishing his movement, he only started with his students who automatically became his followers and members of his movement. Other people who were fascinated by his doctrines also joined him and became his followers. He established his movement to reform certain syncretic practices, which were found among some Muslims in Ibadan during this period.[132] He then started to preach publicly against them.

As we have earlier noted, Bamidele inculcated in his students and disciples certain doctrines, which he considered true Islamic doctrines. First of such is the belief that male Muslims should wear the turban whenever they go outside their house while female Muslims should put on veil and remain under purdah. Therefore members of this movement are easily identified by their dressing wherever they are.[133]

One other vital teaching, which Bamidele imparted to his disciples, is the application of *Sharī'ah*. Although they consider all their practices including their dressing as part of what *Sharī'ah* articulates, they take *Sharī'ah* as a legal system on some matters and apply it within themselves. It becomes paramount therefore to examine how they put it into practice.

Sharī'ah legal practice among the members of *Zumratul-Mūminīn* society started immediately the founder; Alfa Abdus-Salam Bamidele began his Arabic School and movement. An oral source reveals that he was influenced by the

attitude of his teacher, Alfa Yusuf Agbaji whom he found applying *Sharī'ah.* He then introduced the idea to his disciples and members of this movement.[134]

The most important aspect, which the *Sharī'ah* practice of the *Zumratul-Mūminīn* society focuses, is the area of *Talāq* – divorce. Alfa Bamidele considered it unislamic and insulting for him to consummate marriage of his members according to *Sharī'ah* Law and to allow them to be dissolved, for one reason or the other according to the Customary Law. Therefore, he introduced *Sharī'ah* legal practice to cater for such cases in order to discourage his disciples from attending Customary Courts. Such cases were therefore referred to his *Sharī'ah* Court, which he established in his house, for hearing. He was the *Qādi* (judge) in the court supported by some disciples who were knowledgeable in Islamic jurisprudence.[135]

Whenever cases of divorce were brought before him, efforts were usually made to make reconciliation between the couples according to *Sharī'ah*. If this failed, the couples would be separated and the woman concerned would be asked to observe *'Iddah-at-Talāq* (waiting period). There was a special apartment provided for this purpose in his house at Amunigun. During the course of the *'Iddah* however, no man would be allowed to see the woman except her husband who intended divorce. He would be responsible for her maintenance while observing the *'Iddah* and would be allowed to visit her to allow for possible reconciliation.[136]

Apart from divorce cases, there were cases of *Zinā* - adultery. Since the punishment required for a married offender of *Zin*ā according to *Sharī'ah* is stoning to death and *Zumratul-Mūminīn* has no constitutional right to do that, what was done in that circumstance for the person found guilty of the offence was *Rajmu bi-lisān* – stoning by tongue. Hence, the offender would be tongue-lashed to the extent of regretting his or her action. Moreover, there were instances where some offenders of *Zinā* were given hundred strokes of cane but this was lightly carried out to them to ensure that the punishment was applied according to *Sharī'ah* Law.[137]

Sharī'ah application among *Zumratul-Mūminīn* membership continues unabated till today. It operates in all places where branches are found. In carrying out *Sharī'ah* judgements, all sectional heads or leaders are involved. When cases

are brought to the overall leader whose house serves as court, the sectional leaders in the town will be summoned to treat the cases before judgements are passed.[138]

Members of the movement are always pleased with the judgement on such cases because they are sincere and committed to the course of the movement and its teachings. They therefore take whatever judgement comes out of their *Sharī'ah* court in good faith considering it as Allah's injunction, which they must follow. Any culprit will be ready for the punishment awarded because he is a *Khāshi'u* somebody who fears Allah and who will be ready to take the punishment in this world to avert that of the hereafter.[139]

One however observes at this juncture that in an attempt by the movement to apply *Sharī'ah*, some things are harphazardly done. For example, it goes contrary to *Sharī'ah* injunction to provide an apartment at their leader's house. What the *Sharī'ah* Law stipulates is for the woman to observe the *'Iddah* in her husband's house, not leader's apartment. The Qur'an states this:

> Let the woman live (in 'Iddah) in the same place you dwell according to your means…[140]

If the above provision of *Sharī'ah* is meant for possible reconciliation that may come up between the couple when they live together, living separately therefore will not give room for such. Moreso, it will not be necessary for the husband to be going to the leader's house to fulfill his financial obligations or responsibilities required to the wife while on *'Iddah*, it will be easily carried out if she lives with him.

It is pertinent to also note that, *rajmu bi-lisān*-stoning by tongue which the Movement uses as substitute to the prescribed punishment of *Zin*ā is of serious implications under the *Sharī'ah*. The issue of *Zin*ā requires *hadd* punishment which is not expected to be subjected to substution or change by human beings.The Qur'an makes it abundantly clear that there cannot be substitute for the law of Allah.[141] Secondly,this action can be considered an innovation of the *Zumratul-Mūminīn* which has no basis from the *Sharī'ah*. Moreso, innovation which has to do with *hadd* punishment is not expected to be condoned. The Prophet was reported to have said:

> Whoever introduces into this affairs of ours (that is,Islam) something that does not belong to it is a reprobate.[142]

3.7 The *Sharī'ah* practice and Islahudeen Missionary Association of Iwo

Islahudeen Missionary Association of Nigeria is an Islamic Society based at Iwo in Osun State. It was established in 1955/56 by a set of Muslim revivalists or reformers who thought that Islam in Iwo in the late 40s and early 50s was almost at a state of decadence and as a result, required urgent solutions. It was said that the people had become corrupt, many unislamc practices were witnessed and the laws of Islam were been flouted with utter impunity.[143]

Having observed that some unislamic practices were on ground, which were multi-dimenstional and which had gone contrary to the injunctions of Allah and the *Sunnah* of the prophet, Alhaji Usamot from Kuta rose up and started calling for a reform. Alhaji Usamot Kuta who was an erudite scholar and preacher and somebody who was very bold and courageous started calling for reformation from his home town, Kuta. He later moved to Ile-Ogbo and finally to Iwo where he gained the audience of many learned Muslims.[144]

Alhaji Usamot Kuta went from one mosque to another and from one quarter to the other in and around Iwo. As he went about, calling for a reform, he gathered around himself many followers who shared the same view with him. One of these admirers and followers was Alhaji Abdul-Baqi Muhammad, who joined Alhaji Usamot Kuta in the call for reform. Those admirers and followers of Alhaji Usamot Kuta later decided to form an Islamic Society for championing the course of reform. This they did and Alhaji Abdul-Baqi Muhammad suggested that the society be named "*Jam'iyyat Islahudeen*", Iwo, meaning the society for the Reform of Islam, Iwo.[145]

Among the aims of the Association is to encourage the Muslim Community as a whole, and all their members in particular to act strictly in accordance with the dictates of the Qur'an and Hadith.[146] In an attempt to achieve this, the Association felt it necessary to apply *Sharī'ah* legal system among its members with a view to adhering strictly to the injunctions of Allah in the Qur'an and the *Sunnah* of the Prophet as stipulated in the Hadith. Moreso, they believe that these two major sources of *Sharī'ah* should be their watchword and guide in all their affairs.[147]

Based on the conviction of Islahudeen to follow the injunctions of Allah to letter, coupled with the fact that the Qur'an castigates non-compliance with the application of *Sharī'ah* in bad terms,[143] the Association found it compelling to apply *Sharī'ah* among its members. It then employed the use of *Sharī'ah* practice in some problems within its membership. The members never take themselves to any Common or Customary Law Courts; rather they use *Sharī'ah* to handle their cases.[149]

The cases being considered under Islahudeen *Sharī'ah* practice include *Zinā*-adultery, *Talāq* - divorce, *Mīrāth* – inheritance and dispute. On *Zinā*, whenever any member is accused of the offence, representatives of all branches of the Association would be invited to witness the judgement. Should the accused person found guilty of it, the punishment on *Zinā* according to the *Sharī'ah* would be pronounced as the judgement. However, since the Association has no right under Nigerian Constitution to inflict capital punishment of stoning or caning, what they do is to disregard the membership of the culprit or expel him or her from the Association.[150] There is no doubt that this penalty has serious implications on the Association and the culprit. While the Association decreases in membership, the culprit may as a result of his or her expulsion give out totally for such bad action.

When cases of divorce are brought before the *Sharī'ah* Court of the Association all efforts will be made to reconcile the differences between the couple involved. Should the reconciliatory effort failed, the court will give judgement with regard to *'Iddah* of *Talāq* (period of waiting before divorce takes place). The divorcing wife would therefore observe *'Iddah* in her husband's house for three months. However, if after the *'Iddah*, reconciliation cannot be achieved, dissolution will then take place.[151] Among the cases of divorce handled by this Association according to Abdul-Salam[152] include the cases between Amudat of Eleha's Compound and her husband, Musbah of Mojuade's Compound; that of Alhaji Abdur-Razaq of Adegoroye's Compound, Oke-Odo and his wife Fatimoh of Oke-Koto Compound and that of Abdur-Rashid of Kamu's Compound and Bashirat of Olore's Compound. The dissolutions were all carried out under the strict compliance with *Sharī'ah* Law of marriage dissolution.

One other point of note is the fact that in all the dissolutions carried out under the *Sharī'ah* practice of Islahudeen the divorcing wives were compelled to

stay in their husbands house while observing their *'Iddah* in order to comply with the Islamic principle of *'Iddah* observance.[153] The Qur'an states as follows:

> Oh Prophet! When ye do divorce Women, divorce them at their prescribed period and count (accurately) their prescribed period; and fear Allah your Lord; and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness.[154]

Therefore, we observe that unlike the Bamidele Movement that goes contrary to Islamic Law in this regard, Islahudeen Association adheres strictly to it by compelling divorcing wives to observe *'Iddah* in their husband's house. They do not provide separate apartment for such purpose at their leader's house.

Moreover, the death of any member of Islahudeen brings about *Sharī'ah* application on inheritance. The properties the deceased bequeathed are distributed to the heirs according to the *Sharī'ah* Law. A committee of scholars on *Sharī'ah* matters would be duly informed about the properties and the laid rules as stipulated in Qur'an Chapter four verses 11 and 12 would be used by the committee for the distribution of the properties.[155]

Should there be a dispute between two members; complaint would be lodged before the *Sharī'ah* Panel for settlement. The panel would look into the matter with a view to making amicable settlement among them making reference to Qur'an 49 verses 6-10.[156]

Islahudeen Missionary Association of Nigeria, Iwo commenced the application amongst its membership since the inception of the Society around 1955/56 and has continued to apply it till the present time. The method adopted was that, a committee of scholars who were well versed in *Sharī'ah* matters, was set up to form *Sharī'ah* Panel. Any case brought before the Panel would be critically appraised based on the stipulations of *Sharī'ah* Law before a recommendation was made and forwarded to Shaykh Abdul-Baqi Muhammed who serves as Chief Mufti (Oluko Agba) of the Association for his perusal and approval. He could add or delete from the recommendation before a final ruling was given. The ruling would be read to the hearing of members by one of the scholars who was given the directive to do so by Shaykh Abdul-Baqi Muhammad (Oluko Agba).[157]

The *Sharī'ah* court sitting usually comes up on Wednesday or Friday after Jum'ah in Arabic School premises of the Association in Iwo depending on the cases at hand and their urgency. When a judgement is to be delivered, all members would be instructed to converge in the Arabic School premises where sitting holds and a member of the *Sharī'ah* Panel would read the judgement to the hearing of members. To ensure strict compliance with the ruling therefore, a committee was also set for proper monitoring and implementation. Because members too are believers in Allah and his Prophet as well as committee members of the Society, they do not give the committee any problem in complying with the rulings.[158]

3.8 The Faaya Group of Ikirun and *Sharī'ah* application

The Faaya group of Ikirun is a branch of the *Zumratul-Mū minī n* Society otherwise known as Bamidele Movement. Alhaji Abdul-Aziz Afolabi of Ikirun, a student of Alfa Abdus-Salam Bamidele Bada of Amunigun, Ibadan, the founder of the Bamidele Movement, established it.

Alhaji Abdul-Aziz Afolabi was born at Ikirun in 1910. Later in his life, precisely in 1947, he went to the Arabic School of Alfa Bamidele in Amunigun, Ibadan where he studied for eight years. After the completion of his Arabic and Islamic education, he stayed with his teacher to gain more knowledge and experience.[159]

Alhaji Afolabi went as far as Port Novo to preach Islam before he finally retired to his home town, Ikirun to establish his own group and to start public preaching. In 1964, he performed pilgrimage to Makkah and on his return, he established an Arabic School at his house in Okeba in Ikirun in 1966.[160]

Like his teacher, Alhaji Abdul-Aziz Afolabi taught some students who later became his followers and members of his group which championed the propagation of Islam and reformation of all syncretic ideas within the Muslim community in Ikirun. He was very critical and bold in his preaching against idol-worship, hence condemned and waged war of tongue on Idol-worshippers and their practices. He based his action on a Qur'anic verse, which says:

فأصدع بما تؤمر واعرض عن المشركين

Meaning:

> Therefore expound openly what thou art command and turn away from those who join false gods with Allah.[161]

The above Qur'anic verse was interpreted by Alhaji Afolabi to mean, 'expose the evil doers, the idol-worshippers and those who pluralise God.' Thus, it was given Yoruba interpretation of "Faaya". Consequently, Alhaji Afolabi was addressed as "Alfa Faaya" and all his students who graduated from his Arabic School are known and called 'Faaya' till today.[162]

Although this group is known as 'Faaya', it is a branch of *Zumratul-Mūminīn* (Bamidele Movement). Therefore all doctrinal teachings of the Movement are found with 'Faaya' group. Since all the branches apply *Sharī'ah* wherever they are, 'Faaya' group is not an exception in this area too.

Being a student and follower of Bamidele, Alfa Faaya's method of applying *Sharī'ah* was not different from that of his teacher. Immediately he settled at Ikirun for *da'wah* activities, he began the *Sharī'ah* practise among his members and followers as well.[163]

The area the *Sharī'ah* application of *Zumratul-Mūminīn* covers most is the matter of divorce. This is done with a view to forestalling unnecessary exposition of the matrimonial problems of the members to the customary courts whose judges know virtually nothing about the law of divorce according to *Sharī'ah*. Therefore, Alfa Faaya provided an opportunity for his followers to solve their matrimonial problems.[164]

Our research reveals that Alfa Faaya made his house as the *Sharī'ah* court where members brought their cases and provided an apartment where divorcing wife observed her *'Iddah*. Whenever he had any case, he used to invite other prominent members of his group who were well versed in Islamic jurisprudence to his house where the case would be tabled for adjudication. Any divorce case was always preceded with reconciliation move failure which they would resort to dissolution of the couple. The divorcing wife would then proceed on *'Iddah* at an apartment provided for such in Faaya's house.[165]

There was a case of a female member who divorced her husband and was asked to observe *'Iddah* before she married another husband. The woman was one

Mulikat of Obaagun, who after completion of *'Iddah*, was married to Alfa Alimi Ajagbemokeferi of Saba's compound, Ikirun and who was a member.[166] Another example was that of a woman called Wulemat who initially married an Old student of Faaya called Alhaji Abdur-Rahman of Iragbiji but later divorced him and observed *'Iddah* for 3 months at Faaya's house before she remarried to Alfa Muhammad Jamiu of Amolese's Compound, Okeba, Ikirun. The woman has since been with the new husband.[167]

As a corollary to the above, Abdul Salam[168] reports some cases of divorce decided by this group according to *Sharī'ah*. There was a divorce case between Alfa Muhammad Isola and Mulikat Isola, both of Iyalode's Compound, Isale Alfa Street, Ikirun. The plaintiff (Mulikat) accused her husband (Muhammad) of infidelity. The report says that Mulikat was married to Muhammad without the parents of both knowing that Muhammad had consummated another marriage at his station in Ijebu-Ode, Ogun State. As a result of incessant quarrels between the elder wife and the plaintiff on one hand and Muhammad and the plaintiff on the other hand, the plaintiff packed out of her matrimonial home and retuned to Ikirun, her home town.

After all efforts for amicable settlement failed and the defendant did not give positive response, the *Sharī'ah* court of *Zumratul-Mū minīn* decided to dissolve the marriage and said that the defendant, Muhammad Isola should not be entitled to any refund of bride price (Sadaq) because it was he who caused the termination of the marriage as a result of his infidelity and cruelty. Thereafter, the plaintiff observed her *'Iddah* and after its expiration, she was allowed to contract a new marriage with one Alfa Tiamiyu Owolabi, a staunch member of the society and of Osi-Ikolaba's Compound, Ikirun.[169]

Another case was between one Tiamiyu Adelabu Akomonikewu of Osi-Ikolaba Compound, Ikirun and Rabiat Akanke of the same address. Rabiat who was the plaintiff alleged that the defendant was suffering from mental frustration, in which there was no counter claim of denial of the allegation. The defendant agreed with the claim of the plaintiff and averred that there was no more love between them and subsequently, he offered his willingness to release the plaintiff. In spite of this undisputed evidence, reconciliatory meetings were convened between the parties and their parents, but all to no avail. Thus, the case was decided in accordance with the principle of *Mubara'ah*, and the plaintiff was asked

to refund half of her *Mahr/Sadāq* (bride price) to Tiamiyu, the defendant in the suit. Thereafter, Rabiatu Akanke observed her *'Iddah* after which she was married to another staunch member of the society, Gbadamosi Akanni without any suspision.[170]

Apart from divorce cases, the Khalifah (Successor) of Faaya, who is his son, revealed to us during the course of an interview with him that he witnessed the distribution of the properties of a deceased which was carried out by his father according to *Sharī'ah* law in 1984. This occurred as a result of the death of one Sulaiman of Amulese's Compound, Ikirun. His properties were shared among the heirs according to the *Sharī'ah*.[171]

There was also a case of *Zinā* handled by Alfa Faaya. One of his students known as Alfa Ibrahim of Efun's Compound, Oke Amola, Ikirun was alleged to have committed *Zin*ā when the case was brought to Alfa Faaya and the allegation was found to be true, the accused was charged and was found guilty of the offence. *Sharī'ah* punishment of hundred strokes of cane was pronounced as the judgement because he was not married. He refused to take the punishment and as a result left the group.[172]

The *Khalīfah* with his team comprising eminent leaders of *Zumratul-Mūminīn*, Ikirun also handled a case of *Zin*ā committed by one of his students known as Jamiu Afon, who was single. When the allegation of *Zin*ā was brought against him, he was tried and confessed to the allegation. He was then sentenced to hundred lashes of cane. The punishment was given to him in the presence of members and students of their Arabic School on 3rd of February, 1992. He did not refuse the punishment but took it and sought the forgiveness of Allah and vowed never to commit such an act again.[173]

3.9 The *Sharī'ah* application in the Hausa Community of Sabo, Ibadan.

It has been the practice of Hausa people to settle themselves at a place called Sabo in Yorubaland. *Sharī'ah* application is therefore found among the Hausa Community of Sabo, Ibadan. It has always been stated that Islam is *Sharī'ah* and vice verse, the practice of *Sharī'ah* becomes practically imperative upon any Muslim wherever he may be. This is the more reason why the Hausa Muslims make it a point of duty to apply it in their Community wherever they may be.

Our findings reveal that *Sharī'ah* is being applied on matters of personal status of marriage, divorce and inheritance as well as disputes. Therefore, since *Sharī'ah* is a way of life which covers all affairs of a man, they have tried to put it into practice except in the area of capital punishment which the Nigerian Constitution has not permitted them to award.[174]

The *Sharī'ah* matters were handled by some Islamic Scholars who formed *Sharī'ah* panel or committee and used to sit at the palace of 'Seriki Hausawa' (the King or Leader of the Hausa people in Sabo) to hear cases brought before them. The panel had handled cases on inheritance, *Zin*ā and disputes. The *Sharī'ah* practice on divorce is even known among them to the extent that they are conversant with *Sharī'ah* law of triple divorce which they called 'seki uku' in Hausa language, meaning that whenever a divorce occurs thrice, reconciliation is disallowed until the woman marries another man and she is divorced.[175] This principle is provided under the *Sharī'ah* law to avoid indiscriminate divorce cases among couples.

Moreover, the panel was reported to have handled a case of *Zin ā* and the accused was given hundred strokes of cane when found guilty. There was also a case of stealing which was brought before the panel. The accused was alleged to have stolen a ram. When found guilty of the offence, he was banished from Sabo to serve as punishment for the offence. Although this punishment is not comensurate with the punishment prescribed by *Sharī'ah* for theft, the action was taken as a control measure since they have no constitutional power to award capital punishment. [176]

The *Sharī'ah* panel was also reported to have handled a dispute matter on indebtedness. Our research reveals that a member of the Community owed another person ₦30,000.00. When the person owed had the opportunity of collecting a business money on behalf of the person owing, he just deducted his ₦30,000.00 and gave the balance of the money to the owner. As a result, the owner of the business money took the case to '*Seriki Hausawa*' and the *Sharī'ah* panelists were invited to handle the case. The panelists therefore applied *Sharī'ah* Law and ruled that the man has no right to deduct his money from the business money without the consent of the owner. Therefore he should return the money deducted. The ruling

further stated that the man owed has the right to sue the debtor to their panel if he fails to settle his indebtedness. That was how the matter was amicably settled.[177]

3.10 The Nupe Muslims in Ibadan and *Sharī'ah* practice

One of the Nigerian tribes living in Ibadan is the Nupe tribe. They have their settlement in a place called 'Ago-Tapa' around Mokala Area, Ibadan. They are predominantly Muslims who came from Nupeland to settle in Ibadan. Being Muslims living in a settlement in Ibadan, they are found of practicing *Sharī'ah* within themselves in their domain.

Although, the application of *Sharī'ah* among these Nupe Muslims in Ibadan could not be said to have covered all scopes of *Sharī'ah*, they apply it too on matters relating to civil matters like marriage, divorce, inheritance and disputes. The issues relating to the capital punishments such as amputation of hands for theft and stoning to death for *Zinā* were not handled for fear of Nigerian Constitution. However, minor punishments were awarded to offenders as may be necessary according to *Sharī'ah* based on the offence committed.[178]

More importantly, *Sharī'ah* is applied on disputes among themselves. Whenever there was any dispute among two persons, the case would be taken to their leader known as 'Oba Tapa' who would invite the concerned to his palace for amicable settlement according to the *Sharī'ah*. Oba-Tapa, his deputy, the Imam and three other Islamic Scholars would listen to the case and make solution in accordance with the *Sharī'ah*.[179]

It should be noted at this juncture that all matters on *Sharī'ah* were carried out at Oba-Tapa's palace. The set of people mentioned above served as the panelists that listen to cases among the Nupe Muslims. The palace also served as the court where complainants and the accused were to defend their cases. There were 'dongaris' who served as security officers during the *Sharī'ah* proceedings in the palace. They were to ensure and maintain law and order in the palace during the sessions.[180]

The *Sharī'ah* panelists under the leadership of Oba Tapa used to give their rulings on matters brought before them in accordance with the *Sharī'ah* law. There were instances whereby cases liable to punishment by caning, as a result of *Zinā* were inflicted on some offenders. They were given hundred strokes in the presence

of witnesses in the palace of Oba Tapa. However, the most common issues addressed by the panel were those relating to dispute, divorce and inheritance which were handled in accordance with *Sharī'ah* system of law.[181]

NOTES AND REFERENCES TO CHAPTER THREE

1. Akintola, I. 2001. *Sharī'ah in Nigeria: an eschatological desideratum.* Ijebu-Ode: Shebiotimo Publication. p.93.
2. Doi, A.R.I. 1984. *Islam in Nigeria.* Zaria: Gaskiya Corporation Limited. pp.204 – 205.
3. *Ibid.* p.205.
4. *Ibid.* p.205
5. *Ibid.* p.205
6. *Ibid.* p.205
7. Abdul Salam, H. A.. 2001. A brief appraisal of Islamic Law *(Sharī'ah)* in Nigeria.. *Journal of NATAIS* 6.1: p.35.
8. Ambali, M. A. 1998. *The practice of Muslim family law in Nigerian.* Zaria: Tamaza Publishing Company Limited. p.16.
9. *Ibid.* p.16
10. Abdul Salam, o*p. cit.* p.3
11. Oyeweso, S. 1999. *Eminent Yoruba Muslims.* Ibadan: Rex Charles Publication & Connell Publications. p.11.
12. *Ibid.* 13.
13. Oral interview with Prince Dr. Hamid I. Olagunju, (53years), a great grandson of Oba Habib Olagunju of Ede, on 15th of January, 2001.
14. Oyeweso, S., o*p.cit.* p.13.
15. Oral interview with Shaykh Salahudeen Olayiwola, (70years), a reputable scholar in Ede, on 28th of June, 2001.
16. Oyeweso *op.cit.* p.14.
17. Oral interview with Prince Dr. H. I. Olagunju, o*p.cit.* on 15 January, 2001
18. *Ibid.*

19. Oral interview with Prince Pa Lawal Olagunju, (81years), a grandson of Oba Habib Olagunju of Ede on 28th of June, 2001.

20. *Ibid.*

21. Oral interview with Dr. H. I. Olagunju, *op.cit*

22. Oral Interview with Shaykh Salahudeen Olayiwola, *op.cit.*

23. Oyeweso, *op.cit.* p.15.

24. Oral interview with Dr. H. I. Olagunju, *op.cit.* on 15 January, 2001

25. Oyeweso, *op.cit*.18.

26. *Ibid.* p.20.

27. *Ibid.* p.20.

28. *Ibid.* p.20.

29. Hadith (Mishkat 11, 768)

30. Interview with Dr. H. I. Olagunju o*p.cit.* on 15 January, 2001and confirmed by all other people interviewed in Ede.

31. *Ibid* and this was confirmed by Shaykh Salahudeen Olayiwola, *op.cit.* on 28-06-01

32. *Ibid*

33. Oyeweso, *Op.cit.* p. 27 and interview with Dr. H. I. Olagunju, *op.cit.* on 15-01-01

34. Interview with Alhaji Shaykh Abdul-Lateef Adekilekun, (55years), a prominent Islamic Scholar and a grandson of the 1st Chief Imam of Ede, Shaykh Nuhu Adekilekun on 24th of June, 2002.

35. *Ibid.*

36. Qur'an 5, verse 38.

37. *Ibid.* 24, verse 2.

38. Interview with Shaykh Salahudeen Olayiwola, *op.cit.* on 28 June, 2001

39. Adejumo, G. M. 1995. Influence of *Sharī'ah* in Ede. M. A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. p.19.

40. Oyeweso, o*p.cit*. p.20.

41. *Ibid.* pp.20 – 21.

42. Interview with Prince Pa Lawal Olagunju, o*p.cit.* Alhaji Abdul – Lateet Adekilekun o*p.cit.* also confirmed that Mahmud was the *Q*ā*di*.

43. *Ibid.* 24-01-01

44. *Ibid.* All efforts made to get the records proved abortive for they could not be traced.

45. Interview with Alhaji Abdul-Lateef Adekilekun, o*p.cit.*

46. Interview with Prince Pa Lawal Olagunju, *op.cit.* It is also reported so by Okunola, M. A. 1993. The relevance of *Sharī'ah* to Nigeria. Alikali N. et.al. Eds. *Islam in Africa.* Ibadan: Spectrum Books Limited. p.24.

47. Interview with Pa Lawal Olagunju, *op.cit.*

48. Interview with Alhaji Abdul-Lateef Adekilekun, *op.cit.*

49. *Ibid.*24-06-01

50. Interview with Shaykh Salahudeen Olayiwola, *op.cit.*

51. Oyeweso, *op.cit.* 34.

52. *Ibid.* p.36.

53. Hamzat, T. K. 1991. Imamship institution in Iwo central mosque. B.A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. pp.9 – 10.

54. Oyeweso, o*p.cit.*

55. *Ibid.* p.37.

56. Oral interview with Alhaji Bilau, Magaji Ikoyi and the Ekerin Imam of Iwo (85 years), on 22nd of March, 1999, in the presence of some members of Ikoyi's compound, Iwo. Ikoyi's compound, being the compound of the *Q*$\bar{a}$ *di*.

57. Oral interview with Professor Abdul-Yakeen O. O. Oladipo (65years), a great grandson of the 1st *Q*ā*di* of Iwo, on 27th of May, 2000.

58. Interview with Alhaji Bilau Magaji Ikoyi, o*p.cit.*

59. Interview with Professor Oladipo, o*p.cit.*

60. Interview with Alhaji Bilau, o*p.cit.*

61. Interview with Prof. Oladiipo, o*p.cit.*

62. Oral interview with Mallam Akibu Bushrah, (70 years) from Opaoba's compound, Iwo on 22 March, 1999.

63. *Ibid.* 22-03-99.

64. *Ibid.* However, all efforts made to get the records proved abortive.

65. Interview with Alhaji Bilau Magaji Mogaji Ikoyi, o*p.cit*

66. *Ibid.* 22-03-99.

67. Interview with Professor Oladipo, o*p.cit.*

68. *Ibid.* 27-05-2000.

69. Doi, A. R. I. 1984. *Islam in Nigeria.* Zaria: Gaskiya Corporation Limited. p.213.

70. Raheem, B. R. 1987. The contribution of *Rawdat al-Dirasat al-Islamiyyah Wal-'Arabiyyah* to the spread of Arabic language in Ikirun. B.A. Project. Dept. of Religion. University of Ilorin. p.3.

71. Bakare, K. O. 1982. Advent and growth of Islam in Ikirun. NCE Project. Dept. of Islamic Studies. Oyo (now Osun)State College of Education, Ila-Orangun. p.7.

72. *Ibid.* p.7

73. Okunola, M. A. 1984. Interaction between Islamic Law and Customary Law of succession among the Yoruba people. Ph.D. Thesis. Dept. of Law. University of Lagos. p.73.

74. Interview with Prince R. O. Ajao (75 years), of No. 6, Station Road, Ikirun, a great grand-son of Oba Aliyu Oyewole on 3rd of April, 2002.

75. *Ibid.* 03-04-02.

76. *Ibid.* 03-04-02

77. *Ibid.* 03-04-02

78. Interview with Alhaji Shaykh Yunus Sunusi (65years), the Proprietor of the Centre of Islamic and Arabic Studies, Ikirun on 25th of November, 2000.

79. Interview with the Chief Imam of Ikirun, Shaykh Uthman Akorede (85 years) on 15th of January, 2000.

80. Okunola, M. 1993. calls him Bako in his work "The Relevance of *Sharī'ah* to Nigeria." N. Alkali etal. Eds. *Islam in Africa.* Ibadan: Spectrum Books Limited. p. 25. Bako however means a visitor in Hausa language. He may be called so because he was a non-native.

81. Interview with Shaykh Yunus Sunusi, o*p.cit.*

82. Interview with Prince R. O. Ajao, *op.cit.*

83. *Ibid.*

84. Interview with the Chief Imam of Ikirun and Shaykh Yunus Sunusi, *op.cit.*

85. Interview with the Shaykh Yunus Sunusi, *op.cit.*

86. Abdullah, Y. 1998. *Sharī'ah in Africa* Ijebu-Ode: Shebiotimo Publications. p.107.

87. Okunola, *op.cit*. pp.78 – 79.

88. *Ibid.* p.81.

89. *Ibid.* p.79.

90. *Ibid.* p.79

91. *Ibid.* p.80.

92. *Ibid.* p.81.

93. *Ibid.* p.81

94. *Ibid.* p.82.

95. Gbadamosi, T. G. O. 2000. *Sharī'ah* Nigeria: experience of the Southern Nigeria. A Seminar paper presented at the National Seminar on *Sharī'ah* held at Kaduna between 10th and 12th of February. p.4.

96. Akintola, I., o*p.cit.* p.100.

97. Okunola, M. A.. The Relevance of *Sharī'ah* to Nigeria, o*p.cit.* 28.

98. Akintola, I., o*p.cit.* p.101.

99. Okunola, M. A. Interaction between Islamic Law and Customary Law of succession among the Yoruba people. o*p.cit.* pp.82 – 83.

100. *Ibid.* pp.83 – 84. More facts on such judgement can be seen in Okunola thesis, Chapter II, 160 – 161.

101. Akintola, I. o*p.cit*. p.95.

102. Okunola, M. A. Interaction… *op.cit.* p.93.

103. Abdul-Salam, *op.cit.* p.36.

104. Gbadamosi, T. G. O., *Op.cit.* p.5 - 6

105. Abdul-Salam, *op.cit.*

106. Gbadamosi, *op.cit.* p.7.

107. *Ibid.* The text of the petition is provided under appendixes

108. An Excerpt from the text of the memorandum to the Constituent Assembly by D. O. S. Noibi and S. H. A. Malik in 1978. The memo is provided under appendixes.

109 Okunola, The relevance of *Sharī'ah* … *op.cit.* p.28.

110. *Ibid.* p.28

111. . *Ibid.* p.29

112. An address read at the occasion of the launching of the Independent *Sharī'ah* Panel of Oyo State on Wednesday 18th Safar, 1423 A. H. i.e. 1st of May, 2002 at the Central Mosque, Ibadan by the Chairman of the Launching Committee, Alhaji Ishaq Kunle Sanni.

113. The private Bill entitled "Islamic Personal Law Bill" presented to Oyo State House of Assembly is provided under appendixes.

114. The address of Alhaji Ishaq Kunle Sanni at the Launching of the Panel. o*p.cit.*

115. *Ibid.*

116. An Oral interview with Shaykh Abdul-Wahab Adebayo Ahmad (60 years), the Chairman of the Supreme Council for *Sharī'ah* in Nigeria, Oyo State Chapter, on 18th of July, 2002.

117. *Ibid.* 18-07-02

118. *Ibid.* 18-07-02

119. *Ibid.* 18-07-02

120. Interview with Sheykh Ahmad Tiamiy Olawale (44 years), one of the judges or penalists, on 18th of July, 2002.

121. *Ibid.* 18-07-02

122. *Ibid.* 18-07-02

123. Interview with Shaykh Bayo Ahmad, o*p.cit*

124. The excerpt from the report of Osun State Committee on *Sharī'ah* (OSCOS) submitted to Osun State Muslim Community on 21st of July, 2002. The report is provided under appendixes as appendix II.

125. *Ibid.*

126. This researcher is a Secretary to Osun State Committee on *Sharī'ah* (OSCOS) that submitted the report to Osun State Muslim Community's meeting of Sunday 21st of July, 2002. He was therefore a party to the decisions.

127. Doi, A. R. I. 1969. The Bamidele Movement in Yorubaland. *Orita: Ibadan Journal of Religious Studies.* 3.2: p.108.

128. *Ibid.* p.103.

129. Adegoke, O. F. 1985. The Bamidele Movement in Ibadan. NCE Project. Dept. of Islamic Studies. Oyo (now Osun) State College of Education, Ila-Orangun. p.9.

130. Doi, *op.cit.* p.104.

131. *Ibid.* p.104.

132. Adegoke, *op.*cit. p.10.

133. See Doi, *op.cit*. Many of the doctrines are discussed in this book for whoever is interested in reading more.

134. An oral interview with the Khalifah of Bamidele, Alfa Ahmad Abdus-Salam Bamidele (40 years), in the presence of twenty sectional leaders of the Movement on Thursday, 7th of February, 2002.

135. *Ibid.* 07-02-02.

136. *Ibid*. 07-02-02.

137. *Ibid.* 07-02-02.

138. *Ibid.* 07-02-02.

139. *Ibid.* 07-02-02.

140. Qur'an 65 verse 6.

141. *Ibid.* 33:62, 35:43 and 48:23

142. Abdul, M.A.O. 1982. *The selected traditions of al-Nawawi(text, transliteration and commentaries).* Lagos: Islamic Publication Bureau. p.28

143. Tijani, D. A. A. 1983. Alhaji A. B. Muhammad of Iwo in Oyo State (now Osun State) of Nigeria and the Islahudeen Society. M.A. Project. Dept. of Arabic and Islamic. University of Ibadan. p. 56.

144. *Ibid.* p.59.

145. *Ibid.* p.60.

146. *Ibid.* p.62.

147. Interview with Sheykh Muslim Muqadam Hussain, (60years), a stunch member and Principal of Islahudeen Arabic School, Iwo on 12th of December, 1998.

148. See Qur'an 5 verses 44, 45, 47, 49, and 50.

149. Interview with Shaykh Muslim Muqadam Husain, o*p.cit*

150. *Ibid.*

151. *Ibid.*

152. Abdul-Salam, H.A.1996. Matrimonial issues among Yoruba Muslims of Nigeria. Ph.D.Thesis. Dept of Religion.University of Ilorin. p.267.

153. *Ibid.* p.268.

154. Qur'an 65 verse 1.

155. Interview with Shaykh Muslim Hussain, *op.cit.*

156. *Ibid.*

157. *Ibid.*

158. *Ibid.*

159. Afolabi, L.A. 1996. The activities of the Faaya Group of the Bamidele Movement in Ikirun. NCE. Project. Osun State College of Education, Ila-Orangun. p.9.

160. *Ibid.*

161. Qur'an 15 verse 94.

162. Afolabi, *op.cit.*

163. Interview with Alhaji Uthman Wasiri Faaya, the 1st Ajanasi of Alfa Faaya, (70years), on 15th of May, 2002.

164. *Ibid.* 15-05-02.

165. Interview with Alhaji Muhammad Jamiu of Amolese's Compound, Ikirun, one of the oldest students of Alfa Faaya, a man of 52 years plus, on 15th of May, 2002.

166. Interview with Alhaji Uthman Wasiri, o*p.cit.*

167. Interview with Alhaji Muhammad Jamiu, o*p.cit.*

168. Abdul-Salam, o*p.cit,* pp.256 – 257.

169. *Ibid.* p.257.

170. *Ibid.* p.257.

171. Interview with Alfa Ahmad Abdul-Aziz Faaya (36 years), the Khalifah of Faaya and his son, on 15th of May, 2002.

172. Interview with Alhaji Muhammad Jamiu, o*p.cit.*

173. Interview with Khalifah Ahmad Abdul-Aziz, o*p.cit*.

174. Interview with the Chief Imam of Hausa Community Sabo, Ibadan, Alhaji Ahmad Rufai Husain (55 years), on 12th of April, 2001.

175. Interview with the Abdur-Rashid Jamiu (38 years), the Chairman of Hausa Youth in Sabo, on 12th of April, 2001.

176. Interview with the Chief Imam of Sabo, o*p.cit*

177. *Ibid.*

178. Interview with the Chief Imam of Ago-Tapa, Mallam Abubakr, (70 years) in the presence of Mallam Muhammad Bn. Muhammad Thani, the Mufasir of Ago-Tapa, a man of 40 years, on 12th of April, 2001.

179. *Ibid.* 12-04-01.

180. *Ibid.* 12-04-01.

181. *Ibid.* 12-04-01.

CHAPTER FOUR

4.0 AN APPRAISAL OF THE METHODS, PROCEDURE AND SCOPE OF *SHARĪ'AH* APPLICATION IN THE STATES

In the previous chapter, we discussed the *Sharī'ah* application in Oyo and Osun States. The discussion traces the historical antecedents of *Sharī'ah* application from the pre-colonial era up to the present day. It shows clearly to us that application of *Sharī'ah* in these States, never at any period, received official backing of the various successive governments as done in the Northern part of the country even though the constitution of the Federal Republic of Nigeria gives official recognition to *Sharī'ah*.[1]

Regardless of the non-official recognition to the *Sharī'ah* application in these States by the successive governments, some Muslims made it mandatory upon themselves to apply *Sharī'ah*. This chapter therefore attempts to discuss the methods employed by these Muslims in the implementation of *Sharī'ah*. It then analyses these methods from the pre-colonial era up to this time. The chapter also tries to examine the procedure of the *Sharī'ah* application in the States with a view to assessing its standard. It may be assumed that since *Sharī'ah* practice in these states did not receive official recognition by the governments, its procedure may be written off. This is why it is necessary to look at the procedure too. Apart from the above, the chapter discusses the scope of *Sharī'ah* application in the states. It is highly necessary to give the account of the level of the scope. Does it cover the penal aspect of the law or limits itself to the personal law of marriage, divorce and inheritance? The chapter also makes comparison between *Sharī'ah* and customary law in the states. It attempts to probe into why customary law is given due recognition by the governments to the detriment of the *Sharī'ah* when as a matter of fact Muslims in these states are very many.

4.1 The methods adopted for *Sharī'ah* application

As we have earlier mentioned that *Sharī'ah* was not given official recognition at any time in Oyo and Osun States by the successive governments, it will be necessary to mention here how the Muslims in these states went about applying *Sharī'ah* which is considered as a religious duty. More importantly too, the Holy Qur'an speaks about the implications of non-compliance with the

application of *Sharī'ah*.[2] It is incumbent on the Muslims wherever they may be to comply with Allah's injunction regardless of the official backing by the government. The Muslims in these states adopted certain methods in applying *Sharī'ah* at one period or the other, hence such methods are analysed here. These methods could be divided into two major ones vis: individual/ private and group/communal methods.

4.1.1 Individual methods

This methods, as the name implies, centres on how individual Muslims in these states tried to comply with the *Sharī'ah* law in their private life and affairs. More so, *Sharī'ah* encompasses all spheres of human life. It is never confined to legal matters only. It deals with general and legal matters as we have earlier mentioned under the introduction. *Sharī'ah* is also divided into legal theory and legal practice. The legal theory subsumes every relevant act under one of the five legal categories which are: obligatory, recommended, indifferent, disapproved and forbidden.[3] The legal practice however deals with the execution of the legal theory in the law courts.[4] Based on the above premise, Many Muslim individuals in Oyo and Osun States seemed to apply *Sharī'ah* in the first instance on matters that are general or matters that could be classified into legal theory. Take for instance, the Muslims in these states keep to the fundamental principles of Islam as well as conduct all other religious duties in accordance with the *Sharī'ah*. The five legal categories under *Sharī'ah* legal theory mentioned above are adhered to very strictly.

Sharī'ah is also practiced by some individual Muslims in these states in the areas of Islamic personal law of marriage, divorce and inheritance. They conduct their marriages in the mosques and apply *Sharī'ah* law on matters relating to divorce at their own individual and private life level. Ambali confirms this while discussing the practice of *Sharī'ah* among the Muslims of the south thus:

> Islamic law is practised in terms of say, (*Nikāh*) marriage and (*Mī rāth*), succession, but in a purely individual and private capacity.[5]

From the above, we have tried to establish the way individual private method is used in applying *Sharī'ah* in these states. This is done on the basis of self

conviction to the course of *Sharī'ah* and there is no government that can say no to this when Nigerian constitution gives room for fundamental rights including that of religion which is clearly specified under 'Right to freedom of thought, conscience and religion.'[6]

However, from the perspective of legal matters, it is to be mentioned at this juncture that efforts of some Muslim Obas before and during the colonial era could be considered as individual approach towards *Sharī'ah* application in these areas. They used their influence as Obas to apply *Sharī'ah* in their domains. Obas Abdul-Qadir Oyewole of Ikirun, Habib Lagunji of Ede and Muhammad Lamuye of Iwo dispensed *Sharī'ah* on legal matters in their palaces.[7] The singular initiatives of these Obas led to the practice of *Sharī'ah* in their domains for some time even after their demise before it was later abrogated by the British colonialists.

4.1.2 Group/communal method

Although the British colonial masters abrogated the *Sharī'ah* practice initiated by some Obas in these areas and the successive governments there did not yield to the demands of the Muslims to officially recognize *Sharī'ah*,[8] the Muslims in Oyo and Osun States did not give out completely to the application of *Sharī'ah* particularly on legal matters. They employed, apart from individual or private method discussed above, group or communal method in the dispensation of *Sharī'ah*.

This method was employed by Muslim groups or communities to avail them the opportunity of applying *Sharī'ah* among their members or give room for Muslims who voluntarily wish to be judged according to the *Sharī'ah*. They were convinced that failure to apply *Sharī'ah* has a number of implications according to the Qur'an,[9] and that Allah charges the Muslims in the Qur'an thus:

> Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong, they are the ones to attain felicity.[10]

Based on the above Qur'anic injunction, some Muslim groups or organizations made it a point of duty to apply *Sharī'ah* amongst their membership while communal efforts of some Muslims within the *'Ummah* gave birth to

independent *Sharī'ah* implementation. This therefore brings about group/ communal method which we shall try to discuss separately for the purpose of clarification.

(i) **Group method**

This method refers to the method employed by some Muslim groups, organizations or associations in the states (Oyo and Osun) for the application of the *Sharī'ah*. The foremost of the groups is *Zumratul-Mū minī n* who has branches in many parts of Yorubaland and beyond.[11] Wherever they are found, they bring themselves together under a leader and start to apply *Sharī'ah* among their membership. The group is popularly known as Bamidele, a name after its founder, late Abdul-Salam Bamidele of Amunigun, Ibadan. The Faaya group of Ikirun is also a branch of this group. The members of this group are fully committed to the doctrines and practice of the group which include *Sharī'ah* practice. Therefore, wherever they are and whatever number they may be, they appoint a Leader, who supported by sectional heads, insist on the application of *Sharī'ah*. The house of the overall leader in the town is used as the court where all *Sharī'ah* matters were administered.[12] Such matters on which they apply *Sharī'ah* include *Talā q* divorce, *Mīrā th* inheritance and *Zinā* adultery.[13]

Islahudeen Missionary Association, Iwo in Osun State is another example to be cited here which adopts group method in applying *Sharī'ah*. The association aims at adhering strictly to the injunctions and dictates of the Qur'an and Hadith of the Prophet. Therefore, it felt it is necessary to apply *Sharī'ah* among the members and introduced it to them since its inception around 1955/56.[14]

The members of Islahudeen Missionary Association never take their matters to any court except the *Sharī'ah* Court of the Association.[15] A panel or committee of Islamic scholars is appointed to oversee all *Sharī'ah* matters brought before it by members on a specified day set aside for that purpose. The matters, which the panel handles, include *Talā q* - divorce, *Mīrā th* - inheritance and occasionally *Zinā* – adultery.[16]

(ii) **Communal method**

This method refers to the method employed by the Muslim *'Ummah* of a particular place or town to come together as people of the same faith to apply *Sharī'ah* among themselves since the government had not given official

recognition to *Sharī'ah* application. This differs from group method in the sense that it is not restricted to the members of the same group or organization only, it is made opened to all Muslims who so wish to be judged by the *Sharī'ah*.

Under this method is what operates among the Hausa and Nupe communities of Sabo and Mokola areas in Ibadan respectively. The Hausa Muslims in Sabo area of Ibadan constituted the Muslim *'Ummah* of the area and subjected themselves to the practice of *Sharī'ah*. Similar situation was seen of the Nupe Muslims who made use of *Sharī'ah* in the palace of their king known as 'Oba-Tapa'. *Sharī'ah* was applied there on matters relating to divorce, inheritance, adultery and disputes.[17]

The Independent *Sharī'ah* implementation introduced in May 2002 in Ibadan by Oyo State chapter of the Supreme Council for *Sharī'ah* in Nigeria is also another typical example of the communal method adopted in applying *Sharī'ah* in Oyo State. When all efforts to persuade Oyo State House of Assembly to establish *Sharī'ah* courts in the State failed, the Muslims there opted for a non-governmental option called independent *Sharī'ah*.[18] A panel of *Sharī'ah* experts who serve as judges was set up to see to the *Sharī'ah* issues. This gives room for every willing Muslim to take his or her case to the panel for adjudication. The panel handles civil matters of marriage, divorce, inheritance, succession and disputes.[19]

As an Independent *Sharī'ah* Implementation Panel, it functions under the auspices of the Muslim *'Ummah* and operates *Sharī'ah* amongst the willing Muslims who wished to be judged by it, thus applying *Sharī'ah* independently of the government. Mosques are used as courts where cases are heard. It functions like a normal court having judges, court clerks or registers and follows the procedure of a court. Although cases are taken to the panel or court on volition, the judges adjudge the cases according to the *Sharī'ah* and give judgments as stipulated in the *Sharī'ah* law. It is interesting to note at this juncture that such judgments were always willingly accepted by the concerned since they were the ones who willingly took their cases there. The case of the self confessed man, Sulaiman Shittu who confessed to have committed *Zina* before the panel and submitted himself to the punishment of which he was given hundred strokes[20] is a good example to be cited.

4.2 The *Sharī'ah* procedure in the States.

As we have earlier established that *Sharī'ah* was not given official recognition at any period in Oyo and Osun States by the successive governments, it will therefore be impossible to say here that the *Sharī'ah* procedure in these States was subjected to officially recognized procedure of a court under any Nigerian judicial system. It should however be clearly stated here that Islam has its own system of governance which includes judicial system and at various periods of governance under Islamic system, there had been exemplary ways by which the executive, legislative and judicial arms of government carried their functions. Therefore, *Sharī'ah* procedure in these States could not run contrary to the Islamic judicial system. Although, the *Sharī'ah* was applied privately by groups of Muslims or the Muslim *'Ummah* in the States, they endeavoured to adhere to the procedure of *Sharī'ah* law as much as they could.

4.2.1 Appointment of judges

It is pertinent to note that in any court of law, appointment of a judge is very important. Islamic system gives preference to this too. The appointment of a *Q*ā*di* or *Hakī m,* which implies a judge, is given a deserved attention. According to Schacht, a *Q*ā*di* is appointed by the political authority, but the validity of his appointment does not depend on the legitimate character of that authority - one of the matter or fact features in Islamic law.[21] However, he must be '*adl* – just and possess, in addition, the necessary qualities of character and the necessary knowledge.[22]

In view of the above, at one period or the other of the *Sharī'ah* application in these States, the pre-colonial era inclusive, there had been judges appointed by one authority or the other to see to the *Sharī'ah* matters. These judges were chosen or appointed based on their qualities of character and their knowledge. Prior to the arrival of the colonial matters, some Obas who applied *Sharī'ah* appointed the judges and gave them separate places to operate as *Sharī'ah* courts. Mahmud Olagunju, the son of Oba Abibu Olagunju was appointed the *Q*ā*di* in Ede.[23] Muhammad-al-Awwal Akintayo Omojiiro was appointed as *Q*ā*di* in Iwo by Oba Lamuye[24] while Oba Akadiri of Ikirun appointed Alfa Inda Salih as the *Q*ā*di* in Ikirun.[25]

Besides, the individual groups and organizations as well as the different Muslim communities that applied *Sharī'ah* had their judges. The leaders of various groups or organizations assisted by some of their followers who were well versed in *Sharī'ah* knowledge were appointed as judges who administered *Sharī'ah* matters. Where the application of *Sharī'ah* was being undertaken by the Muslim community like the case of the Independent *Sharī'ah* Arbitration Panel in Ibadan, the judges were appointed by the Muslim community, taking into consideration qualities of character and necessary knowledge.

4.2.2 Appointment of clercks and registrars

To assist the *Q*ā*di,* court clerks or registrars were also appointed. They commit the judgment to writing and the written judgement (*Mahdar*) is kept as records (*diwan*) of court proceedings. Our research reveals that there were recorders of *Sharī'ah* proceedings even at the pre-colonial era. For example, during Oba Timi Oyelekan (1899 - 1924) of Ede when Mahmud Lagunju was the *Q*ā *di*, one Alfa Abubakar Sindiku (*Siddiq*) Sobojeje from Ilorin was reported to have served as the registrar of the court that recorded the proceedings in Arabic.[27] He served as registrar in the court until the arrival of the colonialists to the town. There was however a report that it was this same man who later went to Iwo to serve as *Sharī'ah* court registrar there.[28]

Moreover, during the reign of Oba Akadiri Oyinlola of Ikirun (1887-1914) when one Alfa Inda Salih was the *Q*ā*di*, Alfa Salahudeen Ajansi served as the recorder of the proceedings in the *Sharī'ah* Court, which were recorded in colloquial Arabic.[29] This shows the fact that even the *Sharī'ah* practice during the reign of some Muslim Obas in Yorubaland withnessed recording procedure. The most unfortunate thing is the fact that those records were not properly kept and as a result it was difficult to trace them.

We are to note here that the Muslim groups or associations who apply *Sharī'ah* within their membership also try to keep records of their proceedings. Research shows that those associations who set up *Sharī'ah* panel or committee to adjudicate on *Sharī'ah* matters within themselves had secretaries who recorded the proceedings.[30] Although these records were not well kept probably because they did not know the significance of record keeping, for all our efforts to get these

records for the purpose of this research proved abortive. It may be as a result of not wanting to release them or their lack of understanding of what research is all about.

The Independent *Sharī'ah* Arbitration Panel in Ibadan in its own case had court clerk/registrar at the initial stage who records all proceedings of the panel in Arabic. Plan was however made to get somebody who will also record in English to make reading of the proceedings available for English readers.[31] This was later achieved and proceedings are kept in English, some of which are reflected under appendixes.

4.2.3 Procedure for litigations and witnesses

Another important area to be addressed under procedure is the area of action in general. There are what could be referred to as *Murāfa'āt* the litigation; *da'wah* the claim or lawsuit; *muddā'i* the claimant or plaintiff and *Muddā'a'alayhi* the defendant.[32] There can be no action without a claimant or plaintiff. Therefore, when a claimant or (*muddā'i*) brings a claim (*da'wah*) to a court, it becomes the duty of the judge (*Qādi*) to take an action on the claim. The first thing to be decided is whether the action is admissible (valid: *Sahīh*), and in particular, whether the defendant (*Muddā'a'alayhi*) is capable of being sued, (whether he is *Khasm*, a term which is used of the parties to a lawsuit in general); if that is the case, the action can then take place.[33]

The defendant is summoned to the court on the matter or claim while it is read to him. The *Qādi* then questions the defendant concerning the claim; if he acknowledges it, the lawsuit is decided; if he denies it, the *Qādi* asks the plaintiff to produce evidence; if he cannot produce evidence or his witnesses are absent, the *Qādi* orders the defendant, provided the plaintiff demands it, to take the oath relating to facts only not to right or wrong; if the defendant takes the oath, the case is dismissed; if he declines to take it, judgement is given for the plaintiff.[34]

Ajetunmobi's account of the procedure in Area/Native courts in Nigeria where *Sharī'ah* operates conforms to some extent with this. According to him, the defendant in a case would appear before the court in accordance with the native law and custom applicable to the case or matter under consideration. The court clerk or registrar would read to him the claim or complaint of the plaintiff. The

defendant would then be called upon to reply to the claim or complaint in accordance with Islamic rules of procedure after which the judgment would be delivered or the case adjourned.[35]

The procedure of *Sharī'ah* application in the area under study could not be said to be considerably different from this. When there is a claim before a *Sharī'ah* panel or committee, the defendant will be summoned to appear before the panel or committee to acknowledge or deny the claim. For example, when Rabiat Akanke of Osi-Ikolaba compound, Ikirun took the case of her husband Tiamiyu Adelabu Akomonikewu, (both being members of Faaya group of Ikirun) to Faaya's *Sharī'ah* court or panel alleging her husband of suffering from mental frustration, the husband who was the defendant was summoned and when there was no counter claim or denial of the allegation and all efforts to make reconciliation failed, the couple were separated on the principle of *Mubara'ah.*[36] The Independent *Sharī'ah* Arbitration Panel in Ibadan makes use of *Sharī'ah* law procedure in its adjudication. Whenever a claim is made before the panel, the clerk will be asked to summon the defendant to the *Sharī'ah* panel through a letter. On appearance, the clerk would read the claim to him and thereafter he would be requested to reply to the claim or complaint in accordance with Islamic rules of procedure. The nature of the claim and the reply of the defendant determine the judgement of the litigation (*Murāfa'āt*). If for example, the claim borders on matrimonial matter, the Islamic law procedure on reconciliation will be applied first. It is only when all possible efforts on reconciliation failed that judgement with regard to divorce would be given.[37] The *Sharī'ah* law procedure also includes evidence (*bayyinah*). However, the most important kind of evidence is testimony (*Shahādah*) of withnesses, so much so that the term *bayyinah* is some times used as a synonym for *Sharī'ah*. Two men or one man and two women, who possess the quality of *'adl* (just), are required as witnesses (s*huhūd*) in a lawsuit; a great number of witnesses does not lend additional value to their testimony.[38]

As a result of the above, witnesses are called upon in the application of *Sharī'ah* in our area of study as the occasion demands for it and depending on the matter brought before the *Sharī'ah* panel or committee. Such evidence when it is to be given will however be in compliance with the *Sharī'ah* law procedure as discussed above. Therefore, the judges are to be meticulous in taking evidences and screening witnesses. The credibility of witnesses must be tested, hence they could

be put to oath with due permission of the judge in order to clear ambiguities and confusion.[39]

4.3 The scope of its application

The scope of *Sharī'ah* is very wide. We have critically dealt with this in the chapter one above. What we intend discussing here is to examine the extent of the *Sharī'ah* application in the area of study with a view to ascertaining its jurisdiction. We should not however in any way forget the fact that *Sharī'ah* application in this area was on a large scale based on private practice.

We have continued to reiterate that although the Nigerian constitution recognizes *Sharī'ah* law and allows its operation where they so wish[40], the governments of Oyo and Osun States have not allowed the *Sharī'ah* to be applied officially as we have earlier mentioned. Even in the North where it is allowed in the Area/Native courts, it is confined to the law of personal status and family relations.[41] If this therefore is the position of the scope of *Sharī'ah* in the area where it is officially allowed, what becomes of an area where it has not been given official recognition?

It is apparent from the foregoing that the conclusion one may draw is the fact that since there had never been any official recognition in this area for *Sharī'ah***,** its scope can never go beyond civil matters. Our research however reveals that although most of the cases handled under private application of *Sharī'ah* by some Muslim groups and communities centered on civil matters, there were few instances where criminal cases were handled.

It is pertinent to mention that the *Sharī'ah* practised by some Muslim Obas before the colonial period in our area of study included criminal matters. We have been informed that Timi Habib Lagunju of Ede applied *Sharī'ah* in his domain to wipe out all forms of social vices such as prostitution, hoarding, burglary and stealing, hence the end product of his judicial administration was that Ede under him became a crime free society.[42] He was even reported to have ordered *Sharī'ah* punishment of stoning to death on his daughter when she was found guilty of *Zin*ā and the order was carried out.[43] There were instances also that criminal cases like theft and adultery were handled by *Sharī'ah* court in Iwo before the colonial era,[44] while *Sharī'ah* practice in Ikirun at this same period witnessed various offences including criminal ones.[45]

With the arrival of the British colonial administration which led to the abrogation of *Sharī'ah* in Yorubaland coupled with non-recognition by the successive governments after the British which confined *Sharī'ah* to private practice by some Muslim groups, the scope was reduced to civil matters for fear of not contravening the law of the country.[46] However, some few criminal cases were methodically handled.

The Muslim groups and communities that applied *Sharī'ah* in private capacity took it as a serious challenge to ensure that *Sharī'ah* laws which relate to personal matters of marriage, divorce, inheritance and succession are fully carried out among themselves even if the government failed to give official recognition to *Sharī'ah*. Therefore, they charged themselves into it with full commitment to its course. As a result, the scope of its application was restricted to civil matters or law of personal status treating criminal cases on rare occasions. Our discussion in chapter three about *Sharī'ah* practice among various Muslim groups and communities had dealt with this and had shown to us how they handled issues of divorce, inheritance, and dispute.

There were, however, instances whereby some cases relating to criminal matters of theft and adultery were handled. That of theft was methodically handled in the sense that the actual punishment of amputation was replaced with banishment for fear of contravening Nigerian constitution. A case in point is the issue of a man among the Hausa community of Sabo, Ibadan who stole a ram and found guilty of the offence by the *Sharī'ah* panel of the community and was banished from the community.[47] There were instances too whereby issue of adultery (*Zin*ā) was methodically handled particularly the pronouncement of *hadd* punishment of stoning to death. The Bamidele group of Ibadan adopted the method of stoning by tongue i.e. tongue lashing and flogging a married person found guilty of *Zin*ā[48] while Islahudeen Missionary Association, Iwo adopted the method of disgracing a member found guilty of the offence by way of expulsion from the Association.[49]

It should however be noted at this juncture that there were instances whereby *hadd* punishment of caning was carried out on married persons found guilty of *Zin*ā. The Bamidele group revealed to us during the course of interview that it has carried out such punishment although on a lighter mood. For example, a prominent leader in Oyo State from among them, Alhaji Hadi Akilapa was openly

subjected to flogging for committing *Zin*ā by the late Shaykh Abdul-Rasheed Olore.[50] The Faaya group of Ikirun also reported a case of a student found guilty of *Zin*ā and was sentenced to hundred lashes of cane which was carried out in the presence of members and other students on 3rd February, 1992.[51]

The case of the confession of *Zin*ā handled by the Oyo State Independent *Sharī'ah* Panel in Ibadan which was covered by many media needs to be mentioned here. One Sulaiman Shittu reported himself to the panel on Thursday, 10th of October, 2002 where he confessed that he had a sexual intercourse with a Muslim sister who was not his legal wife sometime in June, 2002 and requested that he be punished according to the *Sharī'ah* so as to be saved from the severe punishment of the day of judgment. The panel gave him the opportunity of reconsidering his confession.[52]

When on Thursday, 17th of October, and Thursday, 24th of October, 2002 Sulaiman Shittu restated his readiness for punishment according to the *Sharī'ah*, the panel asked him to sign an undertaking in order to ratify his wish, which he did. As a result of this, the punishment of hundred lashes of cane was given to him on Thursday, 31st of October, 2002 at the Oja-Oba central Mosque, Ibadan where the panel normally sits.[53]

4.4. *Sharī'ah* and Customary Law in the States

As mentioned in the introduction of this chapter, it is imperative to give comparative analysis of the application of *Sharī'ah* and customary law in the states of study with a view to showing the extent of which the application of the former has not been given due recognition when in actual fact, chapter VII of the 1999 constitution under the heading – THE JUDICATURE, parts I and II recognizes Common Law, Islamic law (*Sharī'ah*) and Customary Law. It is noted that apart from the Common Law, which is known to be Christian law, the other system of law which is officially recognized in Oyo and Osun States is the Customary Law known to be African Traditional Religious or Pagan Law, while *Sharī'ah* which is the Muslim law is relegated in these States.

The recognition accorded customary law at the expense of the *Sharī'ah* may be borne out of the contention that *Sharī'ah* is seen in some quarters as part of customary law. In many parts of Northern Nigeria, Islamic law (*Sharī'ah*) is the

predominant law of the area, and consequently comes within the statutory term, 'the native law and custom prevailing in the area of jurisdiction' of a native court.[54] Is the situation the same in the southern part of Nigeria particularly in our area of study? What are the factors responsible for recognition of customary law at the expense of *Sharī'ah*? Is *Sharī'ah* actually part of customary law as assumed? These questions and some others are what we intend to discuss under the comparative analysis, which focuses the following sub-headings: Origin of Customary Law; Is *Sharī'ah* Law a Customary Law? Application of Customary Law in Oyo and Osun States and the effects of Customary Law on the *Sharī'ah* and the Muslims in the States.

4.4.1. Origin of Customary Law

Upon the creation of the colony of Lagos in 1862, one of the first actions of the British authorities was to introduce into the territory, the main body of English law by ordinance No.3 of 1863. But previously, there had been in existence in various parts of the country, local Customary Laws administered for the people by their own recognized chiefs. Any attempt to abolish these local laws would have been futile and contrary to the claim of the British policy of preserving as far as practicable the institutions of the nearly dependent territories. Consequently, the continued administration of customary law was permitted and encouraged provided such local law was not repugnant to natural justice, equity and good conscience.[55]

It is to be noted that the nomenclature of either 'native law and custom' or 'customary law' has colonial orientation. The British administrators and judicial officers were merely searching for words which could differentiate their esoteric religious and exoteric political laws from the traditional laws of the territories they colonized. They were tactical and diplomatic in their approach so as not to appear dictatorial. Tacit concession was given to the people of the colonized territories to apply their respective traditional laws. Yet, a number of checks and balances were provided to prevent the traditional system of law from dominating the newly imposed English law. Such include limitation in the jurisdiction *ex-personae*, territorial jurisdiction and law of application in the native traditional courts.[56]

To the British administrators and judicial officers, English law is superior to any local or traditional laws of the colonized territories hence; they did not hide

their contempt for African traditional laws. Ajetunmobi makes instances of this when he refers to the case of Eshugbayi v. Nigerian Government (1931), when their Lordships of the Privy Council viewed African traditional law as primitive and barbarous.[57] Similarly, Honourable Joseph Chamberlain, who was the Secretary of State for the colonies, said on the floor of the British House of Commons on 22nd of July, 1904:

> We hold our position (overseas) by being the dominant race and, if we admit equality with the inferior races, we shall lose the power which gives us predominance.[58]

In an attempt to search for a uniform term to describe the different aspects of the applicable traditional laws in Africa, several conferences were held. The conferences considered quite a number of terms like "native law", "local law", 'tribal law', 'traditional law', "African law", 'Customary Law' and a host of others, yet there was no consensus on a single term for adoption. Different countries thereby adopted divergent terms that suited them. For example, Ghana adopted 'Customary Law' and had cause to define it as Uganda applied "Civil Customary law" with its peculiar definition. Native law and custom was adopted for Northern parts of Nigeria and Customary Law for the Southern parts.[59] This difference was as a resulf of inability to adopt single term as earlier noted.

One other point of note is the fact that the interest of the British administrators and lawyers was only in making a distinction between the English imported law and other laws prevailing in the colonized territory. Therefore certain qualifications were provided for such laws before application and all rules of Customary Law are subject to certain general tests of validity before they can be enforced. Such include that the laws:

(i) should be applicable only to people indigenous to the locality where such laws hold sway;
(ii) must be existing laws and not mere customs of ancient times;
(iii) must not be contrary to public policy;
(iv) must not be incompatible either directly or by necessary implication with any written law; and
(v) must not be repugnant to natural justice, equity and good conscience.[60]

Both before and after Nigerian independence on 1st of October, 1960 several statutes were enacted to regularize certain Customary Laws. Many of them were gazetted as local byelaws and were administered by Customary Courts of area of jurisdiction of the byelaws. A typical example is the 'Marriage, Divorce and Custody of Children Adoptive Bye-Laws, Order 1958; recorded in W.R.N.L. 456 of 1968.[61]

This statute was administered only in all customary courts of the Western Region of Nigeria. However the criminal code of 1961 brought a codified system of criminal law into operation throughout Nigeria. It is understood from the above explanation that certain statutes are of general application throughout the country while others are for a particular area only. The example of a statute meant to be of general application throughout the whole country is the penal law 1959, N.R. 18 of 1959 together with the penal code (Northern Nigeria) Federal provision Acts (No.25 of 1960) which revoked the power of native or customary courts from trying certain criminal cases especially those offences involving punishment by death or flogging.[62]

From the foregoing, it becomes obvious that the idea of Customary Law originated from the British colonialists and judicial officers in order to make the laws of their colonies subsidiary and inferior to theirs. The irony of it is that, after the independence of these colonies the indigenous judicial officers expected to have raised the status of their own laws did not do so. In Nigeria for example, after independence in 1960, one expected that with some Nigerians heading their country's judiciary, solutions would have been provided for the contempt of the laws met in Nigeria by the English law. The contrary was, however, the case. Both Nigerian lawyers of eminence and their British mentors argued confidently that any law beside the English law was a matter of evidence and not of law as if others are not laws. Ajetunmobi quotes justice Anyebe's statement as revealing this attitude thus:

> Many of these lawyers of eminence, particularly quite a number at the apex of the judicial ladder, have been nurtured in their ways and thoughts from England. There they willy-nilly succumbed to the wily indoctrination that nothing good can come out of Africa. They are more conservative therefore than the English Lord Denning, M.R. in their belief in the sanctity and inviolability of the

> English way of life. And their piercing judicial sword is ready to strike down any law that is likely to outrage the English notions of natural justice, equity, and good conscience … And therefore the only way to develop its (Nigerian) law is to tailor it to English standard.[63]

4.4.2. Is *Sharī'ah* Law a Customary Law?

Having discussed the origin of the term 'Customary Law' and having said that the laws met by the British administrators in their colonized territories were termed as 'Customary Law' or 'Native Law', can we then describe *Sharī'ah* law as customary when in actual fact English law met *Sharī'ah* law on ground in Nigeria – both in the North and South? Is *Sharī'ah* law really a customary law as assumed in some quarters? Why is it treated so in the Northern part of Nigeria? Is *Sharī'ah* treated at all as customary law in the Southern parts of the country particularly Yorubaland where the percentage of the Muslims is highly significant? What could have been the factors responsible for not treating it so? These are some of the questions we have raised for discussion.

It has been earlier established in this work that the introduction of Islam in any part of the world is followed paripasu with the establishment of *Sharī'ah*. Therefore, the application of *Sharī'ah* law predates English law in this country. However, as the Muslims ruled the newly converted territories to Islam with *Sharī'ah* law, the British ruled the conquered lands with the Christian oriented English law. The introduction of both the Islamic and the English laws to Nigeria has thereby reduced the indigenous customary law of the country to the third position.[64]

As the above fact is considered to be incontestable, yet the British and their judicial officers, in an attempt to subvert other laws, classified *Sharī'ah* law as customary law in the Northern Nigeria. This was achieved through Sir Frederick Lord Lugard's famous theory and practice of indirect rule.[65] This is probably the reason why Park[66] observes that the term 'Customary Law' is a blanket description covering very many different systems. These systems are largely tribal in origin, and usually operate only within the area occupied by the tribe.

Park however argues further that tribal laws are not the only systems covered by the term 'Customary Law', for throughout the Federation it includes Islamic Law (*Sharī'ah*) also. This is made explicit in the North by section 2 of the

'Native Courts Law', which provides that 'Native Law and custom includes Moslem law.' He then concludes his argument as follows:

> Thus, for practical purpose, Islamic law and the various tribal laws are treated alike, though there are many theoretical distinctions between them. In particular Islamic law originates from outside Nigeria, and is not a purely indigenous phenomenon. Consequently, it is not grounded in any particular locality, and can apply in appropriate cases throughout the country.[67]

There is no doubt however in the fact that the prevalence of Islamic law in the conquered territories of Africa and the British government's bid to include *Sharī'ah* law among the native customary laws became a problem. Had they accepted the laws of each locality on its own merit and accorded it its status, perhaps there would not have been such problems of nomenclature for laws. As the search for a single nomenclature continued, the courts were making some negative rulings on the issue. For example, in *Khamis V. Ahmed* (1934), the court of Appeal for Eastern African ruled that the law of Islam could not be described as 'native law.' Records are equally available on the inconsistency of British administrators including Lord Lugard – in their understanding of 'native law and custom' which was eventually applied in Northern Nigeria.[68]

In the application of native law and custom in the Northern Nigeria, some problems were associated with it. In the first instance, more often than not, judges were confronted with choice of law from the list of what constitutes 'native law and custom.' The law is basically territorial yet it allowed the application of the law 'binding between the parties.'[69] This has therefore led to judgment and counter-judgment between the lower courts (the native courts) and the appellate courts in some cases. Ajetunmobi gives an instance of *Obi Osuagwu V. Dominic Soldier* (1959) in which the trial *Alkali* court in Kaduna administered Islamic law – as the prevailing territorial law but which was quashed at the superior court by Brown, C.J. with the following remarks:

> Where the law of the court is the law prevailing in the area but different law binds the parties, as where two Ibos appear as parties, in the Moslem court in an area where Moslem law prevails, the native court will – in the interest of justice be reluctant to administer the law prevailing in

> their area, and if it tries the case at all, it will, in the interest of justice choose to administer the law which is binding between the parties.[70]

The above view of Justice Brown became unacceptable to the *Alkali* of Native courts who regarded the application of Islamic law as binding on them 'by divine command' whereas the British administrators and lawyers who permitted its endorsement regarded it as merely a native law and custom. Hence the *Alkali* would prefer to endorse the precise prescription of Islamic law as contained in the legal manuals on any case before him even when that ran counter to an ordinance and regardless of what law might be binding between the parties.[71]

These basic opposing stands had been causing nullification of cases decided by Islamic court judges in the English oriented superior courts and it will continue to be so until proper and appropriate status is given to *Sharī'ah*. As the *Alkali* would not yield to a compromise, the British (trained) lawyers would not divorce themselves of the belief that Islamic law should be among the native law and custom.[72] Ajetunmobi cites an example of the case of *Sulia Ayoola and others V. Murtala Folawiyo* to buttress this point. This case which involved the Will of a deceased Muslim in which the court argued that whether it was called Muhammadan Law or Custom,' "Muhammadan Customary Laws," or "Muhammadan Lawful Custom," it was still the same Customary Law of the Muslims which should be counted among what constitutes "native law and custom."[73]

Contrary to the above, in a similar case with *Asiata V. Goncallo*, the full court held that Islamic law should govern the distribution of the estate of a deceased resident of Lagos, who had lived all his life as a devout Muslim, and had, with the full acquiescence of his two wives, plainly considered himself subject to Islamic law.[74] This shows the inconsistency of the English courts serving as appellate courts on matters of Islamic law. While in some cases *Sharī'ah* law was treated as customary law it was treated as a separate law outside customary or native law in some other cases as the above examples can show.

While discussing the various adducible grounds for the desirability or otherwise of applying, *Sharī'ah* law as merely traditional law of the natives of Nigeria, whether in the North or South, Ajetunmobi examines the place of '*Urf* -

"Customary Law" in the development of *Sharī'ah* legal system. He traces its historical development from the period of the Prophet when he sent Mu'adh b. Jabal as emissary to Yemen and formally approved *al-ijtihad bi ar-Ra'y* as auxiliary to the two primary sources of the *Sharī'ah* - Qur'an and Hadith which later developed to what is known as *Qiyās* (analogical deduction).[75]

Qiyās was used among various schools of thought that later emerged for the interpretation of the custom of the people of the locality in line with the primary sources of *Sharī'ah*. Guidelines were however set up during the process of interpretations. Whatever culture, found to be in conformity with the teachings of Allah in the Qur'an were declared lawful but the contrary unlawful. Similarly, the culture, found to be contrary to the practice of the Prophet but which might not necessarily be unlawful were regarded detestable while the exact practices of the Prophet, which were not derived from the Qur'an were labelled supererogatory. Some other practices which were neither lawful nor unlawful and neither supererogatory nor detestable were termed permissible. With these yardsticks, the culture of any nation could be measured with regard to its legality or otherwise under the *Sharī'ah*.[76]

The extinction of many of the existing schools of thought before the end of the third century of Islam paved way for a few extant ones among which were, principally, the prominent four *Sunni* schools and few others in the *Shi'ah* line. '*Urf* became incorporated in the subsidiary sources of *Sharī'ah* legal system through the 'permissible' acts of the people. Therefore, the major areas in which '*Urf* can play a significant role under the *Sharī'ah* legal system include determination of age of puberty and period of menstruation, which are subject to either geographical / biological circumstances or individual peculiar experiences.[77]

The inclusion of '*Urf* among the sources of the *Sharī'ah* has contributed immensely to the flexibility of Islamic law. Through it, doctors of law were having the opportunity of re-interpreting the two primary sources in the light of people's civilization at different ages and in different localities.[78] It should however be noted that although '*Urf* is among the sources of *Sharī'ah*, only part of it which may conform with either the Qur'anic injunctions or the Prophetic *Sunnah*, or that which is indifferent to both but not in opposition to either can hold sway. Not only that, it is worthy to note that '*Urf* is just a branch of the subsidiary sources of the *Sharī'ah* and not a primary source.[79]

Based on the above submission, it is succinctly cleared that '*Urf* is only incorporated into *Sharī'ah* law as a subsidiary source and never a primary source in order to allow for flexibility of the law. This is not, however, to say that because *Sharī'ah* has given consideration to the customs of some nations or people which are in conformity with the primary sources of *Sharī'ah*, it could therefore be termed 'a customary or native law.'

Moreover, many writers adduced no reason for, and could not justify, the inclusion of Islamic law in the 'native law and custom', Ajetunmobi observes that 'they merely mentioned in their works that the British regarded it as one of the native law, but Anderson attempted to justify the inclusion.' He quotes Anderson as remarking that, 'the Maliki law has, to a great extent, become fused with the customary law of many of the inhabitants of these Emirates.' He (Anderson) thereafter classified Islamic law – as applied in African territories – into three categories:

(i) Where it has become the fundamental law e.g. Zanzibar (now part of Tanzania);

(ii) Where it has become the dominant law as in Tanganyika (now part of Tanzania); and

(iii) Where it was and is still a particular law as in Gold Coast (now Ghana).[80]

While appraising the above three classifications, Ajetunmobi asserts that the three are available in Nigeria. According to him, it is the fundamental law in places like Sokoto and Kano States, the dominant law in Kwara and Niger States, and a particular law in Lagos, Oyo and Osun States where its application is not yet allowed statutorily.[81]

The place of *Sharī'ah* law as applied in the courts of Northern States of Nigeria, being regarded as native law and custom is better than its place in the courts of Southern Nigeria, particularly Yorubaland, where it has never been regarded a part of the applicable customary law. Although *Sharī'ah* law is not a customary law as we have discussed above, its place under the native law and custom of the Northern part of country makes it better compared with what operates in the South where it is not given any recognition officially, whether in the name of customary law or whatever. An attempt to discuss this therefore leads

us to the examination of the application of customary law in Oyo and Osun States as we can see from our next discussion below.

4.4.3. Application of Customary Law in Oyo and Osun States.

As we have earlier mentioned in this chapter, before 1862 when Lagos Colony was created by the British authority, there had been in existence in the territory a full system of local or traditional customary law. Any attempt to abolish that law would have been both futile and contrary to the well-established British policy of preserving as far as was compatible with imperial rule the institutions of newly dependent territories. Consequently, the continued administration of customary law was both permitted and encouraged.[82]

The permission and encouragement given to the administration of customary law by the British authorities led to the development of customary courts where the customary law was applied or operated. Ajibola[83] notes the comments of T. O. Elias while discussing the development of customary courts in Nigeria since the advent of the British thus:

> It was always a cardinal principle of British colonial policy to give explicit recognition to the claims of such immemorial customs and usages as bore the characteristics of rules of law, as understood and applied in the indigenous communities. The theory is that English law operates to the fullest extent, possible, having regard to local circumstances in colonies, whether they have been settled or ceded or annexed.

Initially in the Western Region, the term 'native court' was used, but in 1957, customary courts were established by Decree W.R. No. 26 of 1957, published in the legislation of the Western Region of Nigeria, 1957, and which came into operation as from the 1st July, 1958 to replace the old native courts throughout the Western Region of Nigeria.[84] Since then, administration and application of customary law had been in operation in the customary courts of Yorubaland.

The application of customary law in the customary courts as established and published in the legislation of the Western Region 1957 as stated above continued till the creation of the then Oyo State in 1976 and the excision of Osun State from it in 1991. There was no much change with time or with the creation of

states. Amendments were made *mutatis mutandis* in the existing customary laws. For example, Oyo State Customary Courts Law, 1980 which came into effect on February 11, 1981 recognized only three grades of the court (A, B, & C) as against the previous four, established in second schedule B(1) of W.R.L.N. cap31.[85]

It is interesting to note that with the creation of Osun State from the old Oyo State, Osun State continued to use the laws of old Oyo State to which it formally belonged in its judicial matters pending the legislation of its own laws. Therefore references were made to the laws of Oyo State as applicable to Osun State and this affected the Customary Law too.[86]

The establishment and constitution of customary courts as contained in the customary courts law gave room for an influx of customary courts in Yorubaland in general. In 1975 for instance, the number of customary courts in the defunct Western State of Nigeria alone was 428.[87] The number of customary courts in Oyo State as at 2003 was one hundred and fifty nine[88] while the number of Osun State was ninety-four.[89] There was no local Government area in both States that did not have at least one customary court.

The import of discussing the application of the customary law in these States now comes in at this juncture. Having observed that at least a customary court exists in any local government in each of the two States, is the application of *Sharī'ah* law allowed in these customary courts as part of native law and custom as done in the Northern part of the country? The answer is capital No. Although *Sharī'ah* law is not a customary law as we have earlier established, its recognition under native law and custom in the North makes it better compared with Yorubaland. Considering the significant percentage of the Muslims in Oyo and Osun States of Yorubaland, coupled with the fact that *Sharī'ah* courts had been officially established there, the application of *Sharī'ah* law under the clock of customary law seems to be desirable.

A critical digest of traditional system of justice dispensation in these areas, according to Ajetunmobi, suggests that Islamic law could be desirably applied under the clock of customary law. Disputes were, prior to the Nigeria independence, settled by the elders of a family - a tradition which is still extant. An aggrieved person with the decisions of the family-head could appeal to the head of the community in the ward.

If still aggrieved with latter's decision, the case could go to the local chief in the town and thence to the paramount ruler of the community for final settlement. Undoubtedly, where Muslims were heads of the compound, the ward, the town, or the paramount ruler, their judicial decisions could be sympathetic with the principles of *Sharī'ah* law if they were versed in such and if their warring subjects (litigants) were also Muslims. Once a person embraces Islam, his law *ipso factor* becomes the *Sharī'ah*, though part of his old customary way of doing things, which are not repugnant to Islamic law may be retained.[90]

More importantly too, a cross examination of the customary law of administration in the customary courts of Oyo State (as applicable in Osun State) as well as their jurisdiction and procedure as contained in the laws of Oyo State of 1978, Cap. 33, Section 20, suggest a partial approval of Islamic law if the judges/presidents were leaned in it. This is so because a customary court could apply:

(a) the appropriate customary law specified in section 21 in so far it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force;

(b) the provisions of any written law which the court may be authorized to enforce by an order made under section 24;

(c) the provisions of any enactment in respect of which jurisdiction is conferred on the court by the enactment; and

(d) the provision of all rules and by-laws made by a Local Government, or having effect as if so made, under the provisions of any enactment and in force in the area of jurisdiction of the court.[91]

In addition to the above, the judge of a customary court is given the freedom to apply any customary law of his choice except that the 'welfare of the child shall be the first and paramount consideration' i.e. where the matter is related to the guidianship of children.[92]

From the foregoing, with regard to the jurisdiction of customary courts, there seems to be much difference with that of the native courts in the Northern States. It can therefore be deduced that if the Muslim judges of the customary courts in Oyo and Osun States were trained in the Islamic law system, it would

have been easy for them to apply *Sharī'ah* law as part of the customary law just as their counter-parts in the North applied and still apply such under the clock of native law and custom. Not only that, if the local governments in which Muslims were in majority could enact by-laws with Islamic bias, application of Islamic law in the courts would have been formally legalized.[93] This will be so because the customary law under section 20, sub-section (d) of cap. 33 stipulates that customary court shall administer any by-law enacted by local government.[94]

Considering the above submissions and in spite of the several loopholes contained in the Report of the 1976 Customary Courts Reform Committee set of by the Federal Military Government, the Muslim Customary Court Judges of the Southern States particularly Yorubaland have not been able to apply *Sharī'ah* law in their courts.[95] There may be a number of factors responsible for this. However two of such factors are considered to be highly necessary for mention here.

The first factor responsible for non-application of *Sharī'ah* law by the Muslim judges of the customary courts was that they were not competent to handle *Sharī'ah* matters because of their lack of knowledge about *Sharī'ah* law. Those who were well learned in Islamic law were however not appointed as judges. Moreover, in areas where Muslims were in majority and this was so reflected in the composition of customary courts, no effort was made to train them in the Islamic law.[96]

The second factor which seems to be the major one is the unreadiness of the Muslims to allow *Sharī'ah* law to be submerged with the customary law as we have earlier discussed that *Sharī'ah* is not a customary law as assumed by some people. This, indeed, was the reason why Muslims in Yorubaland have continued to demand vehemently for the establishment of *Sharī'ah* courts in the area. There is no doubt that Islamic law can never be accepted by the Muslims to be merged with customary law. This shows the civilization of the Muslims and their understanding of their religion and what it stands for as well as their readiness to fight for their religious freedom. As the native law and custom cannot be accepted by the Muslims in Northern Nigeria to cover *Sharī'ah* law, customary law may not be accepted by the Muslims in Southern States of the country in lieu of *Sharī'ah* laws; hence the agitation for the establishment of *Sharī'ah* courts perse for the Muslims all over the country.[97]

4.4.4 **Effects of Customary Law on *Sharī'ah* and the Muslims**

The provision given by Oyo and Osun States' laws to the customary law at the neglect of the *Sharī'ah* has placed the former over and above the latter in the two States concerned. As a result of this, there seem to be a number of adverse effects on the *Sharī'ah* and the Muslims in these areas. These bordered on the contempt of *Sharī'ah* by the governments of these States through unofficial recognition and the denial of Muslims their fundamental and constitutional right placing them as second class citizens of their States. The Muslim had no opportunity of a court that can handle their cases in accordance with their religious law – *Sharī'ah*.

There is no iota of doubt in the fact that the 1999 Constitution of the Federal Republic of Nigeria in chapter seven under the heading 'the Judicature' treats judicial matters. The types of courts that are allowed are clearly and unambiguously stated under Federal and State courts in parts one and two respectively. The constitution therefore allows for a state, the establishment of High Court, Sharia Court of Appeal and Customary Court of Appeal.[98] It is however unfortunate that as the constitution of the country makes provision for *Sharī'ah* Law, the Laws of Oyo and Osun State have no provision for it while that of the High Courts and Customary Courts were properly taken care of.

Interestingly too, the constitution allows the consummation and dissolution of marriages under the three types of law recognized by it vis: Christian/English law, *Sharī'ah* law and Customary Law. Out of these three systems of law, it is observed that, it is the jurisdiction of *Sharī'ah* only that specifically and explicitly explains matters relating to marriage. It states that the Sharia Court of Appeal of a state shall be competent to decide among others:

(a) Any question of Islamic personal law regarding marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such marriage and relating to family relationship or guardianship of an infant;

(b) Where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding marriage, including the validity or dissolution of that, or regarding family relationship, a foundling or the guardianship of an infant.[99]

It is worthy of note that the laws of Oyo and Osun State seem to have recognized the three types of marriage i.e. Christian/English marriages contracted in churches or registry, the customary marriages contracted in bride's family house / compound and Islamic marriages contracted in mosques. Conversely however, as these laws make provision for where the first two types of marriages can be dissolved, no provision was made for Islamic marriages. While Christians / English marriages have High Courts for dissolution and customary marriages have Customary Courts, Islamic marriages have no courts where they could be dissolved. The alternative left for the Muslims is to dissolve their marriages in the customary courts where they were not contracted in the first instance! Our contention can be best understood based on the following table:

TYPES OF MARRIAGE	**PLACE OF CONTRACT**	**PLACE OF DISSOLUTION**
(a) Christian / English Marriages	Registry or Church	High Courts
(b) Customary Marriages	Family House	Customary Courts
(c) Islamic Marriages	Mosque	No provision in Oyo and Osun States.

In view of the above, a number of cases of Muslims administered in the Customary Courts or English Courts promoted some adverse effects for Muslims and the *Sharī'ah* itself. Those cases would have been better handled to the benefits of the litigants or parties if handled by the *Sharī'ah* Courts. Regrettably however, some Customary Courts or English Courts attempted at times to apply the law of the religious faith of the litigants or parties under the guise of "personal law"[100] but will apply such law wrongly because of their ignorance about the *Sharī'ah*. In a bid to look at such cases, we have tried to discuss some of them relating to dissolution, inheritance and child adoptive law with a view to driving home our points.

In the first place, Customary Courts have no jurisdiction to entertain any petition to dissolve a marriage under the marriage act. They can only entertain petitions for dissolving marriages under Native Law and custom and which were celebrated within the area of jurisdiction. [101] What could be deduced from this is that any marriage contracted either in church or registry cannot be dissolved in the

Customary Courts except in the High Courts. That shows a good judicial protection for Christian/English marriages while Islamic marriages were put at the mercy of Customary Courts whose judges knew little or nothing about Islamic law. The irony of it is that even the High Court judges cannot handle dissolution of Islamic marriages. Therefore, since no provision was made for dissolving Islamic marriages in a *Sharī'ah* court, the conclusion one could make is that Islamic marriages were automatically classified under Customary Law in these States; hence any petition on dissolution can only be entertained in Customary Court.

Moreover, if both parties in a divorce suit are citizens of Nigeria and are resident within the jurisdiction of a Customary Court but had married in their hometown before coming to reside in that area, that court must be satisfied that both agreed to submit themselves to the jurisdiction of the court before trying such a case, or else they may have to return home for their divorce cases.[102] The implication of this is that if for example a Muslim couple, both of Kwara State origin reside in either Oyo or Osun State and have a course to dissolve their marriage in a Customary Court in any of the States they reside, they should either subject themselves to the Customary Law of that State and be dissolved according to the law or leave for Kwara State where they could get *Sharī'ah* court to entertain their case according to *Sharī'ah* law. This idea is absurd, should there be a *Sharī'ah* court in their place of residence, there would be no need travelling to their home state before such a petition can be entertained according to their religious belief.

One other important point that requires attention is where the woman would be living after she has taken a divorce action against her husband until the case is decided. Under the customary law, it is wrong for her to live with the seducer because she is still the legal wife of her husband, and if the husband finds her living in the house of her seducer, he has the right to sue the seducer for seduction or adultery. While many local byelaws made it illegal for a woman to live with her seducer when her case for divorce is still pending in court, she is allowed to safely live with her parents or any relation of hers.[103] This condition is however disallowed under *Sharī'ah* law. As much as *Sharī'ah* allows divorce at the instance of the wife for some reasons under *Khul'* or *Mubara'ah* and completely abhors seduction and adultery, it frowns at the idea of woman living with her parents or relatives. She must have to live with her husband and observe '*Iddah* in his house.

In addition, since the divorce is at the instance of the wife, should the customary court be prepared to grant divorce, the question of refund of dowry will arise. In such a situation, the court should then take note of the fact that the amount of dowry to be refunded diminishes in proportion to the number of years that woman has lived with the man. Some Local Councils have made bye-laws stating what proportion of the dowry should be refunded if the woman has lived with the man say for five, ten or more years.[103] This is to say that the amount of bride-price refundable diminishes in the event of marriage dissolution, giving regard to circumstances such as the duration of the marriage and the number of children born to it. Thus, in *Okalude vs Onama*, the husband instituted an action for refund of bride-price claiming a sum of one hundred and twenty naira (₦120.00), but the court awarded only twenty naira (₦20.00) holding that under Yoruba customary law, the amount of bride-price refundable decreases as the marriage endures.[106]

To some extent, the provision of the byelaws on refund of bride-price has a tinge of *Sharī'ah* provisions on divorce at the instance of the wife (*Khul'*). There is however a little difference in the refund, particularly on what could be termed "law of diminishing return" that has characterized the customary law. As far as *Sharī'ah* law is concerned, the compensation or refund of bride-price is based on what is agreed upon between the husband and wife to be refunded. The wife may return the whole or a portion of the dower.[107] This is based on the Prophetic tradition that says:

> A woman came to the Prophet (S.A.W) and said: I hate my husband and like separation from him. "The prophet asked: Would you return the orchard that he gave you as a dower" she replied: yes, even more than that, 'The Prophet said: "You should not return more than that".[108]

The custody of the children of the divorced parents as enacted in the "Marriage, Divorce and Custody of Children Adoptive Byelaw, Order 1958"; recorded in W. R. N. L 456 of 1958 needs to be examined here too. There is no rule of law that the custody of a child of tender age must necessarily be granted to its mother; each case must be considered and determined on its own facts.[109] The

customary law of Oyo State which is applicable in Osun States, states under the guardianship of children thus:

i. In any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration.

ii. Whenever it shall appear to a Customary Court that an order made by such court, should, in the interest of a child, be reviewed, the court may, of its own motion or upon the application of any interested person, vary or discharge such order.[110]

Based on the above premise therefore, the decision of the custody of the children of the divorced parents is left in the discretion of the judge presiding over the Customary Court where the case is handled taking into consideration the interest and welfare of the child. This simply implies that it is not automatic to grant the mother the custody of the children when there is dissolution of marriage. The custody may equally go to the father when it is considered to be in the interest and welfare of the child. A question is however to be raised at this juncture. What yardstick would the judge use to determine the interest and welfare of the child?

The above question takes us to the *Sharī'ah* provision on custody or guardianship of children which clearly and unambiguously grants the custody of children to the mother. *Sharī'ah* law terminology for guardianship or custody is known as *Had ā nah*. It is coined from the Arabic word, *Had ā nah* which means the side or part of the body that lies below the armpit. The word is used to express the action of a mother of birds using its wings to protect the young ones. It is in this sense that the word is used to convey the protection a mother gives to her young child in Islamic law. It means the protection and shielding of young ones from the hazards of life at their tender age.[111]

Contrary to the Customary Law therefore, *Sharī'ah* law entrusts the custody of the children at their tender age to the lenient, tender and safe hands of their mothers. It is held by the *Sharī'ah* that the interest and welfare of the child at the tender age should lie within the secure and comfortable hands of the mother. The *Sharī'ah* believes that, under normal circumstances, the safe and protective hands of women are the best practical place to guarantee the interest and welfare of children.[112] In view of this, *Sharī'ah* law considers mothers before the fathers when they separate and should a dispute arises on who should have the custody of their

young children. This, not withstanding, the responsibility with regard to the cost of maintenance and the upbringing of the children still lies with the father.[113]

The administration of the estates of deceased persons under the customary law also requires our attention. Customary Courts have jurisdiction to hear petition for the administration of assets of any deceased native of their locality who did not make any will or who had either made no arrangements at all or made satisfactory arrangements as to how his assets should be divided among his dependents after his death. The court can then make necessary decisions on the petition, but the court must be satisfied that the deceased's marriage was under the customary law.[124] Why then is it that the Customary Courts entertain petitions on the deceased's marriages under Islamic law? It must definitely be as a result of non-establishment of *Sharī'ah* courts which has promoted adverse effects on the generality of Muslims in the states of study and Yorubaland in general.

On the receipt of the petition by the Customary Court, it will investigate what assets the deceased person had and who are the persons entitled to share the assets. Those who are normally entitled to share the assets are the children of the deceased person, and if a man, the wife who was taking care of him until he died, and other dependents for whom he was responsible during his life time. The latter may include the deceased's father and or mother if any and, any adopted son or daughter he might have left. Provisions for these depend upon what assets the deceased person left behind.[115]

It will be appropriate for us to make reference to some few cases administered by the superior courts of law basing their decisions on customary law. In the case of *Ramatu Wuraola Salami v. Saibu Ladapo Salami and Ladeji Salami*, reported in (1957) W.R.N.L.R.10, it was held that:

> The rules of inheritance under native law and custom at Abeokuta are not different from those which appear to be well settled by a line of cases in which the parties are Yoruba, that consequently the Dawodu (i.e. the eldest son) is not entitled to a greater share than the other children, and that all the children are entitled equally irrespective of sex.[116] (Emphasis mine)

The above judgment was based on the Yoruba Customary Law of equality in the shares of children in the estate of a deceased irrespective of sex. This goes

contrary to the Islamic Law of inheritance which gives double of what a woman takes to a man; hence, there is a disparity between Islamic Law and Customary Law in this respect.

Similarly, in the case of Salimotu Adigun Barretto and others V. Kadiri Oniga reported in 1961 W.N.L.R. 112, it was held:

> That in accordance with the expert evidence given for the plaintiffs and accepted by the court, under Epe customary law of inheritance both male and female descendants share equally and that this law applied also to farm lands, there being nothing to prevent women who work on the farm as well as sons from inheriting such lands.[117] (Emphasis mine)

The Customary Law of inheritance which puts both male and female descendants on equal footing as depicted in the judgment above is another pointer to the fact that the Yoruba Cultomary Law is at conflict with the Islamic Law of inheritance. The stand of the *Sharī'ah* is that a man will take double of the share of a woman. This is based on a number of reasons as enunciated later is this section.

We need to also note, at this juncture, that inconsistency has been observed in the traditional Yoruba native law on inheritance. The Privy Council's decision in *Dawodu v. Danmole* provides us this conclusion. The traditional Yoruba rules dealing with a situation where a man has died leaving a number of wives and a large number of children is to divide his property into as many parts as the number of wives he has accordingly. This custom known as *Idi-Igi*, appears to have given rise to numerous disputes, and in order to avoid the expenses and delays of litigation in the formal courts by the British, there evolved an alternative custom known as *Ori-ojori*, whereby, if the head of the family so directed, the property could be divided into as many parts as the number of children the deceased had.[118]

With regard to the case of *Dawodu v. Danmole* mentioned above, neither the Federal Supreme Court nor the Judicial Committee of the Privy Council was prepared to uphold the decision of Jibowu J. rejecting on grounds of repugnancy the Yoruba custom known as *Idi-Igi*, whereby in the particular case, the property of a man who died leaving four wives and nine children would have been divided into four parts and not into nine. Jibowu J. had stated that *Idi-igi* was based on the

principle of equality of treatment between wives, but that, that did not agree with "the modern idea" that the basis of distribution should be equality between the deceased's children. (This was the basis of the alternative custom, O*ri-ojori*). His view, however, did not commend itself to the appellate courts. The evidence had established that whatever "the modern idea" might be, *Idi-igi* was still in vigorous operation in Lagos, and consequently the Judicial committee decided that it should be applied in the case, adding the observation that:

> The principle of natural justice, equity and good conscience applicable in a country where polygamy is generally accepted should not be readily equated with those applicable to community governed by the rule of monogamy.[119]

A comparative analysis of the above instances of the Customary Law with *Sharī'ah* provisions on inheritance shows that there are a lot of differences in the two systems. As far as the *Sharī'ah* provision in this regard is concerned, consideration to the male children is given above the female children. A male child has a portion equal to that of two females.[120] Therefore, equal distribution among the children irrespective of sex as provided by the Customary Law is abhorred by the *Sharī'ah*. Moreso, the *Sharī'ah* is not favourably disposed to the inconsistent nature of the Customary Law of *Idi-Igi* or *Ori-Ojori.* While *Idi-Igi* is completely rejected by the *Sharī'ah* because of its lopsidedness, *Ori-Ojori* is also abhorred because of its inability to distinguish between the shares of male and female heirs. The *Sharī'ah* is therefore considered to be more consistent and just in the shares to the heirs based on the reasons discussed below.

The *Sharī'ah* law gives rules, which guide as to who inherits and who is to be inherited, and what shares go to the heirs. Thus, one of the most important branches of the Islamic family law is that relating to inheritance – *Mīrāth.*[121] Various things are put into considerations by the *Sharī'ah* to determine how an estate of a deceased will be shared. These include conditions of succession and rights of sharers; hence the science of estate distribution takes prominent position in the two highest sources of Islamic law, Qur'an and Sunnah.[122]

The Quranic bases of the distribution of estate are in *Sūratun-Nisā'i*, chapter four verses 7 – 13 and 176 – 177. Verse 11 of the chapter succinctly states the portions to be allotted to the children thus:

> Allah directs you as regards your children's (inheritance): to male a portion equal to that of two females if there are only one daughter, two or more, their share is two-thirds of the inheritance; if there is only one (daughter), her share is a half……

The shares of male and female children as stipulated by the *Sharī'ah* based on the above Qur'anic quotation clearly show the difference between *Sharī'ah* and Customary Law on inheritance. The issue of equality in the shares of male and female children is therefore considered legally untenable from the point of view of *Sharī'ah.* This position of the *Sharī'ah* may be seen by the critics of Islam as a discriminatory tendency against the female gender and may even be described by them as a serious injustice against womenfolk. A critical enquiry into why the *Sharī'ah* has taken that position would convince one that it has some logical reasons for that. Moreso, the *Sharī'ah* law is based on the Divine guidance of Allah, and He as our Creator knows what suits us better.[123]

Hammudah gives the explanation of some Islamic jurists on why *Sharī'ah* has taken that position. It may be submitted that in the Islamic scheme of society, women are free from the usual economic responsibility. They are not legally required to provide for any person, not even for themselves. If they have no independent resources, they are to be fully maintained by their able male relative. The female is always assured by law of adequate care. Even, the wealthy wife is to be maintained by the husband, the needy sister by the brother, the mother by the son, the daughter by the father, etc. Every living person needs subsistence, and every able male is held responsible for his own and possibly for that of other dependants. But not every deceased person leaves property for inheritance. This may suggest that the male is more likely to be 'liable' than 'benefit'. His obligations to relatives, male and female alike may well exceed what he could possibly inherit from any of them. When he sometimes receives a larger share of inheritance, it is probably in recognition of his manifold obligation and in partial scheme seems so designed to ensure equity. When a larger share of the property is

allocated to the exclusively liable male, who may be responsible for an entire household or perhaps beyond, and a smaller share is allocated to the "economically non-responsible" female, the allocation cannot be easily called discriminatory against women. It would be discriminatory, indeed, if men and women were given the same or equal financial responsibilities. Since they are not, the sociological concept of differentiation or the Islamic term of equality characterizes the Islamic system more accurately than discrimination.[124]

From the above comparative discussion on *Sharī'ah* and customary law, it suffices to mention here therefore that they are two different systems that do not operate on the same level. It is however sad to note that non-availability of *Sharī'ah* courts in Oyo and Osun States had forced many Muslims to take respite in the customary courts. The effects of this are not farfetched. Such Muslims had fallen as victims of mal-treatment and mis-judgement since justice was administered according to the customary law which is based on mere cultural sentiment rather than Divine guidance. This is causing a lot of problems to many Muslim homes. Justice, as taught by their religious law (*Sharī'ah*) could have been attained if they were opportuned to be tried in *Sharī'ah* courts. Moreso, having allowed customary courts to operate in these states at the detriment of the *Sharī'ah* courts as a result of non-recognition, the Muslims were made to partronise the former, putting the application of the latter at a serious disadvantage. For these reasons, the Muslims of these states need to gear up to the challenge and use their predominant population to secure the right which colonial, neo colonial and military dispensations have denied them in the present democratic polity.

NOTES AND REFERENCES TO CHAPTER FOUR

1. The 1999 Constitution of the Federal Republic of Nigeria allows for the establishment of Sharia Court of Appeal of a State as stipulated in section 275 sub section 1.
2. Qur'an 5 verses 44, 45 and 47.
3. Schacht, J. 1950. *The origins of Muhammadan jurisprudence*. London: Oxford University Press. p.133.
4. Ajetunmobi, M. A. 1988. Shariah legal practice in Nigeria: 1956 – 1983. Ph.D. Thesis. Dept. of Religion. University of Ilorin. p.7.
5. Ambali, M. A. 1998. *The practice of Muslim family law in Nigeria.* Zaria: Tamaza Publishing Company Ltd. p.29.
6. Vide 1999 Constitution, Section 38.
7. Full discussion on how these Obas applied *Sharī'ah* in their domains was made in Chapter three.
8. It will be recalled that the demands of the Muslims in these areas were mentioned under Chapter three. For example Ibadan Muslims requested for *Sharī'ah* in 1938. The demands were made in 1976, 1978, 1980, 1984 and 2000 by various Islamic Organisations.
9. The implications are stated in the Chapter and verse quoted already in footnote number two above.
10. Qur'an 3 verse 104.
11. Doi, A. R. I. 1984. *Islam in Nigeria,* Zaria: Gaskiya Corporation Ltd. p.284.
12. Oral Interview with Khalifah of Bamidele, Alfa Ahmed Abdus – Salam (40 years), on Thursday 7th February, 2002.
13. See our earlier discussion on this group in Chapter three for details.
14. Oral interview with Shaykh Muslim Muqadam Hussain (60years), a stunch member of the Association and Principal of Islahudeen Arabic School, Iwo on 12th December, 1998.
15. *Ibid.* 12-12-98.
16. See Chapter three on full discussion about the Association.
17. Detailed discussion about *Sharī'ah* practice among the Hausa and Nupe communities is in Chapter three of this work.

18. Vide the address read at the occasion of the launching of Independent *Sharī'ah* Panel of Oyo State on 1st May, 2002 at the Central Mosque, Ibadan by the Chairman of the Launching Committee Alhaji Ishaq Kunle Sanni.
19. See chapter three for details on Independent *Sharī'ah* Arbitration Panel.
20. The *Nigerian Tribune* of Thursday 31st October, and 1st November, 2002 reported the incident.
21. Schacht, J. 1964. *An introduction to Islamic law.* London: Oxford University Press p.188.
22. *Ibid.* p.125.
23. Oral Interview with Prince Pa Lawal Olagunju (81 years), a grandson of Oba Abibu Olagunju of Ede on 28th of June, 2001.
24. Oral Interview with Alhaji Bilau, the Magaji Ikoyi, and Ekerin Imam of Iwo, a man of 85 years on 2nd of March, 1999.
25. Interview with Shaykh Yunus Sunusi (65years), the Proprietor of the Centre of Islamic and Arabic Studies, Ikirun on 25th of November, 2000.
26. Schacht, *Op.cit.* pp.188 – 189.
27. Interview with Prince Pa Lawal Olagunju, *Op.cit.*
28. Interview with Alhaji Abdul Lateef Adekilekun, (53 years), a prominent Islamic Scholar and a great grandson of the 1st Chief Imam of Ede, Shayk Nuhu Adekilekun on 24th of June, 2002. This information may be considered to be true for Mallam Akibu Bushrah of Opaaba's Compound, Iwo made us to believe that there was a recorder who came to Iwo and was a native of Ilorin.
29. Interview with Shaykh Yunus Sunusi, *Op. cit.*
30. Our interview with Islahudeen Missionary Association of Nigeria Iwo showed that their panel has a secretary who recorded proceedings in Arabic. The Bamidele Group of Ibadan and Faaya Group of Ikirun (both of Zumratul-Muminin) claimed to have records too.
31. Interview with Shaykh Abdul-Wahab Adebayo Ahmad (60 years), the Chairman of the Supreme Council for *Sharī'ah* in Nigeria, Oyo State Chapter a man of over on 18th of July, 2002.
32. Schacht, *op.cit.* p.189.
33. *Ibid.* p.189
34. *Ibid.* p.189

35. Ajetunmobi, *Op.cit.* pp.145 – 146.
36. Abdul-Salam, H.A. 1996. Matrimonial issues among Yoruba Muslims of Nigeria. Ph.D. Thesis. Dept. of Religion. University of Ilorin. pp.256 – 257.
37. Oral interview with Shaykh Ahmad Tiamiyu Olawale (44 years), one of the *Sharī'ah* Judges, on 18th of July, 2002.
38. Schacht, *Op.cit*. pp.192 – 193.
39. Ajetunmobi, *Op.cit*. p.147.
40. The Nigerian Constitution of 1999 stipulates this in Section 38.
41. Ajetunmobi, *Op.cit.* 74.
42. Oyeweso, S. 1999. *Eminent Yoruba Muslims.* Ibadan: Rex Charles Publication and Connel Publications. p.20.
43. Interview with Prince Pa Lawal Olagunju, *Op. cit.* Some other people interviewed in Ede attested to the fact.
44. See chapter three under *Sharī'ah* practice in Iwo.
45. Chapter three also deals with *Sharī'ah* practice in Ikirun.
46. This was the position of all the leaders of the Muslim groups practicing private *Sharī'ah* interviewed.
47. Interview with the Chief Imam of Hausa Community Sabo, Ibadan, Alhaji Ahmad Rufai Hussain (55 years), on 12th of April, 2001.
48. Oral interview with the Khalifah of Bamidele, Alfa Ahmad Abdus-Salam Bamidele, *Op.cit.*
49. Interview with Shaykh Muslim Muqadam Hussain, *Op.cit.*
50. Interview with the Khalifah Bamidele, *Op.cit.*
51. Interview with Alfa Ahmad Abdul-Aziz Faaya (36 years), the *Khalifah* of Faaya, on 15th of May, 2002.
52. Nigerian Tribune, Thursday 31st October, and Friday 1st November, 2002 reported the story.
53. *Ibid.*
54. Park, A.E.W. 1963. *The source of Nigerian Law.* Lagos: African University Press. pp.180.
55. Ajibola, J.O. 1982. *Administration of justice in the Customary Courts of Yorubaland.* Ibadan: University Press Ltd. p.1.
56. Ajetunmobi, *Op.cit.* 253 – 254.
57. *Ibid*. p.254.

58. *Ibid*. p.254
59. *Ibid.* pp.254 – 255.
60. Park, *Op.cit.* pp.68 – 82.
61. Ajibola, 1982. *Op.cit.* p.5.
62. *Ibid.* p.253.
63. Ajetunmobi, *Op.cit.* p.259.
64. *Ibid.* p.253.
65. Ajibola, 1982. *Op.cit.* p.2.
66. Park, *Op.cit*. p.65.
67. *Ibid.*
68. Ajetunmobi, *Op.cit.* p.255.
69. *Ibid.* p.257.
70. *Ibid.* p.257.
71. *Ibid.* pp.257 – 258.
72. *Ibid*. p.258.
73. *Ibid*. p.258.
74. Park, *Op.cit.* p.131.
75. Ajetunmobi, *Op.cit.* pp.249 – 250.
76. *Ibid.* p.251.
77. *Ibid.* pp.251 – 252.
78. *Ibid,* p.252.
79. *Ibid*. p.252.
80. *Ibid.* p.256.
81. *Ibid.* p.256.
82. Park, *Op.cit.* p.1.
83. Ajibola, *Op.cit,* pp.2 – 3.
84. *Ibid,* p.6.
85. Ajetunmobi, *Op.cit.* p.263.
86. Oral interview with Mr. S. A. Adeoye (55years), the Deputy Registrar II of the the High Court of Justice of Osun State on 9th of January, 2003.
87. Ajibola, *Op.cit.* p. 8.
88. The data was supplied by Bar. Raheem Adebayo Shittu, a member of Oyo State Judicial Commission.

89. This information was supplied by Mr. S. A. Adeoye, *Op.cit.*

90. Ajetunmobi, *Op.cit.* p.262.

91. The Laws of Oyo State of Nigeria, 1978, Cap.33, Section 20, in Vol. II, 414 – 415.

92. *Ibid.* Section 23, 416.

93. Ajetunmobi, *Op.cit*. p.265.

94. The Laws of Oyo State of Nigeria, *Op.cit.*

95. Ajetunmobi, *Op.cit.* 267.

96. *Ibid.* p.263.

97. *Ibid.* p271.

98. 1999 Constitution of the Federal Republic of Nigeria, Chapter II, Sections 270, 275 & 280.

99. *Ibid*, Section 277, Sub- section 2 (a) & (b).

100. Park, *Op.cit.* p.130 explains that when Islamic law is applied in an area where it is not the predominant law, it becomes the personal law of some individuals. And aside the parties being Muslims, they should also regard themselves as subject to Islamic Law before the judge can apply it.

101. Ajibola, *Op.cit.* p.34.

102. *Ibid.* p.34.

103. *Ibid.* p.35.

104. Doi, A.R.I. 1984. *Sharī'ah*: the *Islamic law.* London; Ta Ha Publisher. P.195.

105. Ajibola, *Op.cit.* p.35.

106. Abdul-Salam, *Op.cit.* p.193.

108. *Ibid.* p.193.

109. Ajibola, *Op.cit.* p.36.

110. The Laws of Oyo State of Nigeria, *Op.cit.* Cap. 33, Section 23, Subsection 1 & 2

111. Ambali, *Op.cit.* p.253.

112. *Ibid.* p.255.

113. *Ibid.* p.258.

114. Ajibola, *Op.cit*. p.38.

115. *Ibid.* p.38.

116. *Ibid.* p.39.

117. *Ibid.* p.40.

118. Park, *Op.cit.* p.68.

119. *Ibid.* pp.71 – 72.

120. Qur'an 4 verse 11.

121. Doi, *Op.cit.* p.271.

122. Ambali, *Op.cit.* p.207.

123. The Holy Qur'an points to this fact when it says: "Should He not know, He that created?" Qur'an 67 verse 14 .

124. Hammudah, A.1982. *The family structure in Islam.* Lagos: IPB. pp.269 – 270.

CHAPTER FIVE

5.0 PROBLEMS AND PROSPECTS OF *SHARĪ'AH* APPLICATION IN OYO AND OSUN STATES

Having examined the historical background of *Sharī'ah* and its application in Oyo and Osun States in the preceding chapters, attempt is made in this chapter to discuss the problems facing *Sharī'ah* in these states as well as its prospects there. The discussion is carried out under seven major sections, some having sub-sections with a view to critically analyzing the problems. The first section examines the misconceptions about *Sharī'ah* while the second section discusses the Muslims' attitude to *Sharī'ah* application. *Sharī'ah* and the non-Muslims of the states is the subject of focus of the third section and a survey of *Sharī'ah* Law and Nigerian constitution is made in the fourth. The fifth section looks at the establishment of *Sharī'ah* courts in the states while the sixth section gives data analysis of the questionnaire administered on the study and discusses it. The last section contemplates on the prospects of *Sharī'ah* in these states.

5.1.0 Misconceptions about *Sharī'ah*

The word '*Sharī'ah*', when heard by some people, sounds awful, repugnant and like a monster that must be fought. Therefore, there is no gainsaying the fact that *Sharī'ah* is internationally misunderstood while many people have misconceptions of various dimensions about it. These misconceptions pose serious problem for its application in various places. Yorubaland, particularly our area of study, (Oyo and Osun States) is not left out. Attempt is made here to look at some of these misconceptions with a view to explaining how they pose problem for the application of *Sharī'ah* in this area.

5.1.1 *Sharī'ah* as a barbaric law

It is the belief of some people that we are in an era of civilization and as a result we should appear as *'civilized people'*. The misconception being carried about by this set of people is that the only law that could be regarded as civilized is the *'Common Law'*. To these people therefore, whenever a mention is made about '*Sharī'ah Law'* they see it as *'Uncivilized Law'* and smear it with series of

adjectives like '*barbaric'*, '*archaic'*, '*backward'*, '*stone-age Law*', '*jungle justice*' etc. Akintola summarises this all when he observes thus:

> *Sharī'ah* has been stigmatized in our society. It has been labeled 'backward', 'barbaric', 'stone-age Law', 'jungle justice', while the Muslims have been branded 'un-civilised', mad and other unprintable names[1]

Although the anti- *Sharī'ah* attitude and propaganda were originated from the imperialists to suppress *Sharī'ah* Law, it is amazing that some Muslims share their opinion and propagate it in their land. According to Doi,[2] the imperialists played a double role: service to their home governments and service to the cause of Christianity. They created doubts in the minds of Muslims and demoralized them so much that in their inferiority complex the colonized Muslims began to sing praises of their imperial masters, and welcomed their system of government, economics and Law. It is this same problem that affects the thinking of some people in this area and makes them to say that *Sharī'ah* is an uncivilized and barbaric law.

Doi also quotes some other writings of Professor Fyzee on *Sharī'ah* to buttress the fact that he was trying to please European orientalists at the expense of Islam and his faith. One of such reads thus:

> If the complete fabric of *Sharī'ah* is examined in this critical manner, it is obvious that in addition to the orthodox and stable pattern of religion, a newer, "protestant" Islam will gradually arise in conformity with conditions of life in 20th Century cutting away the dead wood of the past. We need not bother about nomenclature, but if some name has to be given let us call it "Liberial *Islam".*[6]

Based on different statement of Professor Fyzee on *Sharī'ah* some of which are already quoted, Doi concludes that what he is saying about *Sharī'ah* is that God-made laws are only necessary for people still at primitive stage of moral and social development while man made law is the product of nature and advanced civilization.[7] This remark of Doi tallies with our earlier position that *Sharī'ah* is misconstrued to be a law of the past which is no more relevant in this century; hence it is regarded as barbaric and uncivilized.

It is this position that some Muslim elites in Oyo and Osun States still hold. When *Sharī'ah* is mentioned to them, they feel uncomfortable because of what the orientalists have made them to believe through their writings. They were thus not motivated to encourage clamour for the introduction of *Sharī'ah.* Such Muslims, as Akintola puts it, are victims of the tornado of misinformation and avalanche of criticisms against *Sharī'ah* particularly on radio, television and newspapers since the Muslims have few sympathizers in the press.[8]

5.1.2 Cruelty of *Sharī'ah*

Another mis-conception being peddled about by the enemies of *Sharī'ah* is that *Sharī'ah* law is cruel. This point is somehow associated with the one just discussed above; hence the two are atimes mentioned together. It is part of the tactics of the Western critics of *Sharī'ah* to confuse the world about the benefits of *Sharī'ah* to human society. It is also seen as part of their games to portray Islam in a bad colour so that people will not embrace it and its law (*Sharī'ah*). As much as they gave Islam all sort of names, they also created confusion about its law (*Sharī'ah*). They therefore, described *hadd* punishment of *Sharī'ah* as barbarious, cruel and degrading.

This description of the Western critics gave a set-back to the application of *Sharī'ah* in many parts of the world. It has been noted that whenever *Sharī'ah* is demanded for by Muslims, some critics would rise up against it describing its punishment as 'offensive', 'cruel', or 'barbaric'. The most unfortunate thing however is the fact that some uninformed Muslims believe these critics and follow them in describing *Sharī'ah* with such names.

In an attempt to debunk this obnoxious claim of the Western critics, Muslim scholars have put forward counter-claims about the cruelty of *Sharī'ah.* For example, Akram argues that:

> The Islamic penal laws are criticized in certain quarters on the ground that punishments it prescribes are harsh and barbarious and fail to take into consideration the mitigating circumstances. This is ill conceived. The offences which are liable to *hadd* punishment are fixed and rigidly enforced, provided the required conditions are satisfied and they are proved beyond shadow of doubt.[9]

Arguing further about the humane nature of *Sharī'ah* law to debunk the claims of its critics, Akram opines that "a comparison of the provisions of *Sharī'ah* and statutory law shows that the provisions of *Sharī'ah* are more simple, elaborate, wide, less technical and humane than those of statutory law. The rules of *Sharī'ah* give wide range of choice to the courts to select one or more of the penalties that may suit the crime and serve the interests of society. This choice is not to be arbitrarily exercised by the judge, but it is to be exercised within the framework of Divine law."[10]

While reacting to the claim of Western critics on *hadd* punishment of *Sharī'ah,* Umar observes that "Western critics of *Sharī'ah* describe *Hadd* punishment as barbarious and degrading. But is it not better to degrade an individual who has already degraded himself by committing an offence rather than to hold the whole society in perpetual fear of being a victim of one violent crime or the other? When one compares those countries which operate *Sharī'ah* with those which operate other legal systems, the fact emerges that the countries operating *Sharī'ah* are more peaceful, safe and crime free. This is clear testimony of the superiority of *Sharī'ah* over their legal systems. Some of the critics find it difficult to find fault in *Sharī'ah* legal system and their criticism can be regarded as unintended compliment."[11]

We need to mention at this juncture that the strictness of some *Sharī'ah* punishments is not enough evidence to describe *Sharī'ah* as cruel and inhuman. There is no legal system that does not give punishment to criminal offences. The strictness of *Sharī'ah* on criminal offences is to ensure that human society is made conducive for living. Therefore, *Sharī'ah* is divine and human, final and evolutionary, fixed and flexible, universal and comprehensive, humane and strict.[12] Amoloye's opinion is highly relevant here:

> The humaneness and strictness of the *Sharī'ah* go hand in hand. No apology is offered for its detractors who in order to confuse the international opinion on the ability of the *Sharī'ah* to redeem the world and who mount orchestrated propaganda against some aspects of its penal law labeling it 'barbaric and cruel'.[13]

At this juncture, some comparison is to be made before we conclude. As the Western critics see *Sharī'ah* punishment as cruel, what could be said of the

statutory law of our country? Can we compare ordinary amputation to public execution by firing squad, which was the common practice by the Military regimes in Nigeria? Can we compare it to the jungle justice whereby robbery suspects are burned alive? Akintola raises these questions and further observes that "we need to ask: which one is jungle justice'? Which one is '*barbaric'?* To set a suspected thief ablaze or to hand him over to a *Sharī'ah* court for investigations and probable punishment? Of course the punishment may be the amputation of a hand, but is it not better for a robber to lose a hand than for him to be burned alive? There is no doubt that if a robber is asked to choose between losing a hand and being burnt to death he would choose the *Sharī'ah* alternative.[14]

Akintola submits further that "if thieves are burnt alive by Nigerians and their corpses are left on the streets for weeks, how can any fair-minded person allege that *Sharī'ah* is cruel or inhuman just because the arms of thieves are amputated.[15] He further observes that:

> those who contend that amputation, stoning and other punishments, in *Sharī'ah* are degrading or inhuman missed the point. Islamic law is designed to restore morality to the morally decadent world. There must be sacrifices here and there. Those who commit crimes against humanity should not be treated with kid gloves.[16]

5.1.3 ***Sharī'ah* and women liberation**

One other misconception being carried about is that *Sharī'ah* is anti-women. This is considered as propaganda designed by the enemies of Islam to poison the minds of people, particularly women, against Islam and the *Sharī'ah.* It has been the contention of those people that *Sharī'ah* down-grades the status of women and never gives them due recognition in the society. Women, according to them, are not free under *Sharī'ah* system of law. They are not allowed political leadership role, they are locked up in their houses through purdah, they are denied equal share under inheritance and they are disallowed to dress the way they like.

Under the disguise of freedom for women, some people explored the situation, using the name of women liberation organization, to run down *Sharī'ah.*

They misformed people about it and described *Sharī'ah* as a system that is against women. This is done in an attempt to mobilize women against *Sharī'ah.* It is not a surprise therefore, if it is remarked that *Sharī'ah* in Nigeria would enslave women. This is evident from the reaction of a woman liberation organization known as Women in Nigeria (WIN) that regards *Sharī'ah* as a ploy to further subjugate the Nigerian women under the cloak of religion, by male-dominated society.[17]

It is this misconception of *Sharī'ah* that makes this organization to believe that the introduction of *Sharī'ah* in any part of the country would enslave women by shutting them up in their houses and make their acquired education useless and unbeneficial. This is clearly expressed by the National Co-ordinating Secretary of Women in Nigeria (WIN), Mrs. Benedicta Daudu while reacting to *Sharī'ah* when she observed thus:

> It is a wicked ploy to snuff out the life of the already marginalized women. What will happen to our mothers and sisters who have had the benefit of education at public expense if they will not be allowed to work and make use of the knowledge acquired? Why should they just remain in the home and rot away with their education?[18]

The attack on *Sharī'ah* from women organizations and human rights activists within and outside Nigeria became more prominent when some *Sharī'ah* courts in the Northern part of the country, at one occasion or the other, sentenced some women to *Sharī'ah* punishment. For example, Safiya Hussein was convicted of adultery and was sentenced to death by stoning in the Sokoto State based on evidence that she was divorced and pregnant.[19] Bariya Ibrahim Muazu, a teenage girl was sentenced to 100 lashes for pre-marital sex in Zamfara State[20] and Amina Lawal was sentenced to death by stoning for committing adultery and having a child out of wedlock by a *Sharī'ah* Court in Katsina State.[21]

In view of the above, various efforts were made by some individuals and organizations within and outside the country to condemn *Sharī'ah.* For instance, U.S. Representative Betty McCollum (D.MN) introduced her Concurrent Resolution 351 on 14th March, 2002 in the House, which expresses the sense of Congress that the United States should condemn the barbaric practice of execution by stoning as a gross violation of human rights and should call upon all countries

of the world to recognize such evil practice as a major abuse of civil rights.[22] The House Concurrent Resolution 251 was co-sponsored by 48 democratic and republican Members of the U.S. Congress and was referred to the House Committee on international relations and the subcommittee on International Operations and Human Rights on 25th July, 2002.[23] One of the points raised against the sentences is as follows:

> Execution by stoning is an exceptionally cruel form of punishment that violates internationally accepted standards of human rights, including those set forth in the United Nations Universal Declaration of Human Rights and the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[24]

It is to be mentioned at this juncture that one of the points raised in the House Concurrent Resolution 351 centres on the fact that women are the target of these punishments and this looks discriminatory against women hence, unequal treatment has set in. This is expressed thus:

> Women around the world continue to be targeted for discriminatory, inhuman and cruel punishments by government who refuse to protect the rights of all of their citizens equally.[25]

Moreover, it is on record that both Amnesty International, U.S.A and Human Rights Watch strongly condemned the stoning sentences of some *Sharī'ah* courts in Nigeria and urged the American citizens to speak out and take action against draconian laws and discrimination against women in Nigeria by sending a message to their representatives and Senators asking them to co-sponsor and pass the House Concurrent Resolution 351.[26]

Also, there was even criticism from some Muslims on the sentences. Particular reference will be made to Muslim Women's League, (MWL), a non-profit American Muslim Organisation which criticized the judgement passed on Bariya Ibrahim Muazu and wrote Zamfara State Governor on it. In the letter, they

expressed their outrage and anger on the judgement and saw it as discriminatory one against women. They remarked thus:

> We are writing to you to express our outrage and anger at the lashing of this teenage mother; a punishment that, we believe, did not meet the basic requirements of justice under *Sharī'ah***.** Clearly, the Qur'an goes out of its way to provide protection to women recognizing their vulnerability in matters of extra-marital or pre-marital sex. A woman may get pregnant as a result of such act; A man never does.[27]

Criticizing the judgement further, the Muslim women's League observes in the letter as follows:

> We believe that, in terms of the correct understanding of the *Sharī'ah***,** the judgement against Bariya and the subsequent punishment were unjust and not consistent with the Islamic requirements of evidence. We believe that many essential aspects of the *Sharī'ah* for such a case were overlooked.[28]

Do we, on the basis of the above assertion, agree that *Sharī'ah* is anti-women? Is it actually discriminatory and cruel to women as we were made to believe? Our answers to these questions shall show objective elucidation of the issues involved. *Sharī'ah* improves the lot of women. It elevates their status and asserts their dignity. Women, through the ages, suffered degradation and dehumanization. In India, inheritance was traced only through males. In Athens, women were regarded as minors regardless of their ages. They were considered inferior to men. They could neither inherit nor own property. Worse still, they could not choose husbands by themselves. In Rome, women were treated like wards without any political or legal power. A woman could not be a surety, a witness or an heir. She was only there to bear children and clean the house. She was economically and sexually exploited. The scenario was the same in Arab countries before they accepted Islam. Women in Arabia could not inherit their parents. Similar was the situation in many parts of the world including Nigeria. But

with the coming of Islam, all these changed in countries with significant Islamic influence.[29]

The *Sharī'ah* treats women with all respect and humility. Women can inherit under *Sharī'ah*.[30] They have the right to choose their own husbands and to collect their dowry.[31] The *Sharī'ah* grants women the right to live by prohibiting female infanticide.[32] The *Sharī'ah* also guarantees a woman right to seek divorce under *Khul'*. More importantly too, the *Sharī'ah* stipulates that the husband be kind to his wife.[33]

It is also to be mentioned that *Sharī'ah* protects the privacy of women; hence, it enjoins them not to expose their body unnecessarily.[34] This is done to protect them from being raped or molested since almost all parts of their body can easily attract men and promote seduction. It is to be noted here also that women are free to continue using their father's names after marriage under *Sharī'ah* whereas Common Law enslaves womanhood by compelling women to drop their maiden names.[35]

The *Sharī'ah* gives them this opportunity in order to guarantee their liberty and preserve the dignity of their families. According to Akintola, many women are known to have lost valuable materials and contracts due to this loss of identity. Childhood friends, school-days partnership who have tangible contributions to make cannot find these women after changing their names. Even documents bearing their maiden names have to be authenticated. It creates problems when a married woman seeks employment or admission with credentials bearing her maiden name. Akintola notes that "the change of name of a woman in newspapers looks ridiculous as it can be viewed that the change of name in the newspaper is an indication that the woman has been purchased by the man whose name she now bears. She is his new property".[36]

Contrary to the belief that *Sharī'ah* forces women to stay at home without doing any job, it is to be stated that women are free to earn a living under *Sharī'ah* according to Qur'an 4, verse 32 which reads thus:

> Covet not what Allah had given some more than the other. To men belongs what they earn and to women also belongs what they earn. Ask Allah for His bounty, for Allah has full Knowledge of all things.

It is as a result of the above position of the *Sharī'ah* that many Nigerian Muslim women, particularly those in our area of study, are found to engage in one job or the other to earn a living. While some of them are traders; buying and selling different materials, some are found to be professionals at various levels contributing their quota to human development. It is therefore incorrect to say that *Sharī'ah* forces women to stay at home without doing any job.

It is interesting to note that it is only *Sharī'ah* system of law that gives due recognition to women in the area of inheritance. In some systems, women could neither inherit nor own property; rather they were treated like wards without any political or legal power. Although, some people use to query why *Sharī'ah* gives double of what a woman takes to man. The reason for this, as Iqbal observes, is not determined because of many inferiority inherent in a woman, but in view of her economic opportunities, and the place she occupies in the social structure of which she is part and parcel. Iqbal states further that "while daughter according to Muslim law is held to be full owner of the property given to her by both the father and the husband at the time of marriage, the responsibility of maintaining her throughout her life is wholly thrown on her husband. Besides, the *Sharī'ah* has put greater economic responsibility on man while a woman's role is comparatively much lighter". [37] While remarking on how *Sharī'ah* protects the interest of women on inheritance, the wife of Zamfara State Governor, Dr. (Mrs.) Karima Ahmed Sanni observes thus:

> This law *Sharī'ah* allows the women to inherit certain percentage of the entire wealth of their husband if they die. But unfortunately, it is not so in most of our societies. Women are relegated to the background. They are seen as punching bags, to be thrown out at will. But Islam gives women a standing rule and protection.[38]

There is no gainsaying the fact that Islam has liberated womenfolk more than 1,400 years ago. Akintola therefore asserts that while European and America

women were searching for liberty, it had been in the Qur'an waiting for it to be tapped. This is why Prince Charles of Britain boldly confronted the British parliament in 1996, urging Britain and the rest of the West to learn from Islam.[39]

Contrary to false allegations leveled against *Sharī'ah* by its antagonists that it has not treated women very well, Islamic records, observes Akintola, show that Muslim women have been very active and unrestricted in their conduct for human activities. He (Akintola) draws instances that Muslim women were active on the battle field even in the days of Prophet Muhammad (S.A.W.). They cared for the wounded. They fought when necessary. The fact that the Prophet took the advice of a woman Ummu Salmah, at Hudaybiyyah on a critical issue and at a most critical moment buttresses this fact. Akintola also points to Nana Asma, daughter of the great Shaykh Uthman b. Fudi, who was a politician, a poet and a teacher. These feats could not have been possible if *Sharī'ah* treats its women like slaves. The Shaykh himself was a champion of women liberation. It is on record that he condemned those who restrict the freedom of women. Akintola quotes the Shaykh thus:

> They treat their wives and daughters like tools to work with. When they are spoiled they are thrown on the rubbish heap.[40]

It is therefore our candid belief that based on the above submission; we should have seen clearly that contrary to the negative picture painted about *Sharī'ah,* it is actually a liberator, an emancipator, a true champion of women liberation, a restorer of dignity of family and a protector of the pride of women.

One fact that needs to be pointed out is that *Sharī'ah* recognizes the nature of women and places them in their natural position. There is no doubt that the Creator Himself knows the differiatial nature of women He created. Our physical differences bear eloquent testimony to this fact. For instance, in spite of the fact that both male and female children eat and drink the same things, the female children alone develop feminine breasts in adolescence. How do we explain this? Why do the male children grow up into men wearing beards and having Adam's apple? From where do men get their Adam's apple?[41] Islam recognizes these

natural differences in women and men and treats them in that manner. It is this position of Islam that some people misconstrue to mean that lower status is given to women. M.B. Muhammad summarizes this as quoted by Akintola thus:

> Islam confers on women all the political and economic rights which men enjoy, only their spheres of activities being different. It is these various duties of both male and female in Islam that have been mistakenly or perhaps deliberately misunderstood by hostile critics of Islam as implying a lower status for women.[42]

5.1.4 *Sharī'ah* and the press

The press creates a very serious problem for *Sharī'ah* in Nigeria, particularly in the South-West which our area of study falls. Apart from misinforming people about *Sharī'ah,* the press also misconstrues *Sharī'ah* matters and incites non-Muslims against Islam and the *Sharī'ah.* There were a lot of insinuations, misconceptions, misinformation and incitements which the press had carried as news or editorial comments in either print or electronic media on *Sharī'ah.* It then becomes necessary to also look at this area as a problem for the *Sharī'ah* and profer solutions.

There is no doubt that Nigerian media trained from the West and as a result had Western orientation. It is also a fact that the base of the orientalists is the West. These orientatlists cultivated hatred and prejudice for Islam and the Muslims and disseminated abusive and false accounts about them. The main targets of their attack are Qur'an, the *Sunnah*, the *Sharī'ah* and the personality of the Prophet Muhammad.[43] The Nigerian press seems to have the same orientation of the orientalists and as a result cultivated hatred and prejudice for Islam, the Muslims and the *Sharī'ah.*

Moreover, the historical record of journalism in Nigeria shows that it was Rev. Henry Townsend, who introduced Christianity to Nigeria in 1842 who also pioneered journalism in the country. He established a printing press (the first in Nigeria) in 1854 and the *Iwe Iroyin* (a weekly Yoruba newspaper) in 1859.[44] It is also on record that the first real attempt at printing in Nigeria was made by another Christian missionary, Rev. Hope Waddell, in Calabar in 1846 while the first daily

newspaper, the *Lagos Daily News*, was published in 1925 by Herbert Macaulay who was also a Christian.[45]

It has been observed that Nigerian media seems to be one of the representatives of Western Christian Civilization whose virulent attack on Islam in the world today is notorious. Therefore, the strategies adopted by the anti-Isamic and anti- *Sharī'ah* mass media are very similar to those adopted by their patrons in the Western Christian world who have consistently maintained their anti-Islamic position since the time of Raymond Ellul (d.1315 C.E.). At the academic level, the strategy is called orientalism but at the mass media level it was the same strategy of propaganda adopted by Hitler when he was preparing the Jews for extermination by Nazis.[46]

The official introduction of *Sharī'ah* by the Zamfara State Government in 1999 showed the level of hatred the media has for Islam and *Sharī'ah.* There was a serious *Sharī'ah* debate in the media; newspapers, radio and television, both foreign and local. The media outfits propagated the views of their proprietors, advertisers and the majority of their readers. All the three categories are not favourable to Islam in Nigeria. Most of the newspaper proprietors and reporters in Nigeria are Christians. Christians dominate the economy and majority of the readers are Christians. Therefore, it is not in their interest that *Sharī'ah* should be allowed to flourish in Nigeria; hence, they adopted several strategies of "Killing the *Sharī'ah*."[47]

In the work of Ibrahim Ado-Kurawa titled "*Sharī'ah* and the Press in Nigeria: Islam versus Western Christian civilization" reviewed by Al-Kanawi,[41] he made an attempt at content analysis of two of the most influential Christian papers of Nigeria; *The Guardian* and *This day* and his conclusion is that they are both anti-*Sharī'ah* in their coverage but that *The Guardian* is more subtle in this strategy than *This day*. He randomly selected the newspapers of October to December, 1999 for this analysis, which exposed their pretension as observed by one of the columnists of *This day*. He states inter alia that:

> In the main, I think most of the anti- *Sharī'ah* apostles have not shopped for new arguments and attitudes. More troubling is that they have not been totally honest about

> their grouse. Rather than let everybody know that their position is influenced either directly or remotely by a religious ideology they pretend a certain hatred for barbarism or a passionate love for humanity. The religious or worldly ideology under which they hide have their share of barbarity and inhumanity in the view of others.[48]

This anti- *Sharī'ah* vanguard in the Nigerian press, particularly, that of the South-West, showed that many media practitioners are religious bigots and propagandists who explore propaganda tactics similar to those of their Western Christian patrons to attack Islam and *Sharī'ah.* They displayed these tactics in their reports about *Sharī'ah* in Nigeria. Hence, insinuations, blackmail, incitements and misinformation were noted in the captions, news, comments, opinions and editorials of many media reports on *Sharī'ah.*

In an attempt to buttress our points, examples are cited at this juncture. *The TELL* magazine in one of its editions captioned about *Sharī'ah* thus:

> *"SHARĪ'AH TIME BOMB, The NEW Plot Against Obasanjo."*[49]

In the editorial comment of the magazine, the opening remarks insinuate as follows:

> Tick-tack: A time bomb, code named "*Sharī'ah*", is ticking away in Zamfara State. The rest of the country is holding its breath because its eventual explosion may shatter the dreams and aspirations of the neo-nationalists who fought with sweat and blood to have a refurbished Nigeria after the wear and tear of successive military dictatorships.[50]

The editorial report goes on to analyze the motives of the introduction of *Sharī'ah* in Zamfara State and insinuates that it is an attempt to upstage the government of President Obasanjo. The report reads inter alia:

> Since Ahmed Sanni Yerima, Executive Governor of Zamfara State, put the whole country on notice concerning his intention to enforce *Sharī'ah* law in the State, many Nigerians have been wondering what his motives were. While some

> readily dismissed him as a rabble-rousing religious zealot, others were quick to read between the lines and decipher a "grand design" to upset the applecart of President Obasanjo's seemingly progressive administration.[51]

Similarly, the Punch of Wednesday, 17th of November, 1999 reported that *Sharī'ah* was meant to sabotage the Federal Government. The report was credited to one Rt. Rev. Emmanuel Kane Mani, an Anglican Bishop of Maiduguri. The report was captioned "*Sharī'ah* was meant to sabotage FG, says Bishop."[52]

The incitement of the public by the press on *Sharī'ah* compounded the ethnic sentiment between the South and the North. The press openly incited the Southerners against Northerners in general and the Muslims in particular. Akintola cites the example of African Independent Television (AIT) programme of Wednesday, 23rd February, 2000, from 10 to 11p.m. which led to a letter of protest of the Muslim Rights Concern (MURIC) dated 24th February, 2000 wherein the programme was described as "nothing but deliberate incitement of the public against Muslims, premeditated provocation of the adherents of Islam and sheer insensitivity in the delicate nature of religion."[53]

A Yoruba weekly newspaper called "*Alaroye*" incited its Yoruba readers against the Hausa. It consistently drummed up anti-North and anti- *Sharī'ah* sentiments. In its publication of 28th of March, 2000, such ethnic sentiment was conspicuously mentioned under the caption – "*Musulumi Omo Yoruba: Hausa kii sore yin"* i.e *Yoruba Muslims: The Hausa are not your friends*. This shows the level of its incitement of Yoruba Muslims against the Hausa. The worse of it all was the insinuation of threat of assassination of the crusaders of the actualization of *Sharī'ah* among Yoruba Muslims.[54]

Contrary to the hues and cries of the Nigerian Press however, people began to find out later that fears over *Sharī'ah* were only exaggerated by the media. For example, the Senior Special Assistant to President Obasanjo on National Orientation, Chief Onyema Ugochukwu, a Christian, visited Zamfara State after the introduction of *Sharī'ah* and remarked that fears were exaggerated. He was quoted to have said:

> The *Sharī'ah* thing is exaggerated. The fears are being worked up by the media.[55]

President Olusegun Obasanjo himself debunked the fears over *Sharī'ah*. He carpeted the Nigerian media on the *Sharī'ah* imbroglio during his visit to Atlanta, USA in September, 2000 when some Nigerians met him and tried to prompt him to take a cough stance on the issue. He reportedly remarked:

> Those who take position on the basis of what they read from the Nigerian press will very often go wrong. The Nigerian press is at the moment operating in ways that call its integrity to question. They call it press freedom. But, I think it is press anarchy.[56]

It is a pity that the Nigeria media has allowed religious bigotry to override its professional ethics. Instead of conducting proper investigations with a view to knowing the true benefits of *Sharī'ah,* it has rather insinuated and misinformed the pubic about it. It is not surprising that Nigerian press could display ignorance of *Sharī'ah* application in Yorubaland at a particular period or the other. This is informed by the reports of Saturday Punch of 29th July, 2000 captioned "Southern Moslems vow to introduce *Sharī'ah"* and that of the *Nigerian Tribune* of Thursday 31st October, 2002 captioned: "*Sharī'ah* in Yorubaland?" The captions of these two newspapers portrayed the Southern part of the country as an area where *Sharī'ah* has never been applied or required at all.

It is on the basis of above, we wish to share Liad Tella's opinion that Nigeria media committed some 'avoidable errors' over the *Sharī'ah* imbroglio. One of such errors is that the press misguided unsuspecting Nigerians. He believed that the *Sharī'ah* was not controversial but the press made it to look so. The media's first blunder, according to him was its use of "uncomplimentary language showing arrogance in ignorance."[57] He further opines that the principle of sacred facts and free comments has been thrown above board particularly on matters of religion. Sentiment has been allowed to over-ride unbiased presentation of facts.[58]

5.1.5 **Nigeria as a secular state**

It has been the belief of some people that Nigeria is a secular State; hence *Sharī'ah* should not be allowed in the country. This misconception has been observed as a problem for the official introduction or application of *Sharī'ah* in some parts of the country particularly the South-West. It is unfortunate that many elites misconstrue Nigeria to be a secular state and hide under this to condemn the *Sharī'ah* having the belief that its application implies turning Nigeria to Islamic State. Having identified this as a problem, it becomes necessary to discuss this misconception in this work.

The word, '*secular'*, according to Webster's New International Dictionary, is:

> something of or pertaining to the worldly or temporal as distinguished from the spiritual or eternal. It is something belonging to the state as distinguished from Church; non-ecclesiastical; not religious in character nor devoted to religious ends or uses; not sacred.[59] Encyclopedia Britannica also gives the meaning of 'secular' as non-spiritual, having no concern with religious or spiritual matters.[60]

Expatiating further the meaning of secular, Encyclopaedia Britannica explains that in the mediaeval and Late Latin, *saecularis* was particularly used of that which belongs to this world, hence non-spiritual e.g. *vitam venturi seaculi* as contrasted with this present life; and the church as opposed to the world. It is thus used first to distinguish the 'regular' or monastic clergy from those who were not bound by the rule (regular) of a religious order, the parish priests, the 'secular," who were living in the world, and secondly in the wide sense of anything which is distinct, opposed to, or not connected with religion or ecclesiastical things, temporal as opposed to spiritual or ecclesiastical.[61]

However, secularism, according to Webster's New International Dictionary, is:

> a system of social ethics based upon a doctrine advanced by G.T. Holyoake (1817-1906) that ethical standard and conduct should be determined exclusively with reference to the present life and social well being. Any view of life, education, etc or any policy or program referring to such, based on the promise that religion and religious consideration, as of God and a future life, should be ignored or excluded.[62]

The above definitions of 'secular' and Secularism' clearly show to us that the two words have something to do with the separation of State politics or administration from religion or God. It then becomes pertinent to enquire as to whether Nigerian State or political administration is separated from God or religion or not. If by all indications Nigeria as a State has something to do with God or religion, it could not stand to be described as a 'secular' state.[63]

Contrary to what some people have been misled to believe, Nigeria has never been a secular state. Since the time when Nigeria became an independent state, there was no constitution or law, which made Nigeria a secular state. A critical examination of the Nigerian Constitutions or Laws of the past and present will reveal that one cannot find any provision that states that Nigeria is a secular state. The only section which people make reference to, is the one that constantly appears in our Constitutions and is stated in section 10 of the 1999 Constitution thus:

> The Government of the federation or of a state shall not adopt any religion as state religion.

This constitutional provision is misconstrued or wrongly interpreted by some people to mean secularism for Nigeria. Whereas the reasonable interpretation of the provision is that a single religion is prohibited from being imposed on all the citizens of the country which simply implies that Nigeria is a multi-religious state.[64]

It is unimaginable that Nigeria which is densely populated by Muslims and Christians can be described as a secular state. Sambo therefore suggests what could have brought the idea. According to him, the problem with Nigeria is that it is a country which was once a colony of the British which belongs to the Western world. The influence of the Western world on Nigeria being one of the emerging

countries of the third World is pervasive so much that it is expected to adopt their constitutional arrangements and models. The historical antecedents of those Western countries as evidenced by the violent conflicts that raged between the church and state some centuries ago have led them to opt for secularity so as to curb the wings of the church. The secularism option has since blindly become a desideratum for every emerging country of the Third World even where its social set up is wholly dissimilar to that of a typical Western country. Nigeria as a Third World Country finds herself in this predicament as she is being urged to embrace the Western Political System willy nilly, including the concept of secularism.[65]

Based on the definition of secularism which we have earlier given, its simple and current usage simply connotes "the belief that the state, moral, education, etc should be independent of religion."[66] In other words the State, that is, its government and other public institutions in the land should be irreligious. The situation in Nigeria runs contrary to that. In the first place, the constitution of the country which serves as the guiding law for all citizens recognizes God. The preamble to the Constitution which asserts that the nation is under God confirms this. Moreso, section 17 sub-section 3(b) on social objectives states that the government can promote religious matters.

In addition, there are various sections in the Constitution on oaths. The tradition of oath taking in the country is to swear by the Qur'an or Bible which are religious books or by whatever the concerned believes in. The provision of the constitution in section 38 which gives right to freedom of thought, conscience and religion is another pointer to the fact that Nigeria is not a secular state. There are several other sections in the Constitution of the Federal Republic of Nigeria that contradict or debunk the idea that Nigeria is a secular state.

It is to be mentioned also that the government of Nigeria allows religious activities to take place even during its official programmes or activities. For instance, religious leaders of both Islam and Christianity used to be invited to give prayers at the opening and close of official programmes. Apart from that, public holidays are declared by the government for the celebration of religious festivals of Muslims and Christians.

The instances cited above are enough evidence to show that Nigeria is not a secular state. The most appropriate description that befits Nigeria is that, she is a 'multi-religious' state. The term multi-religious signifies the existence of persons within a political entity who profess different religious creeds – revealed or traditional – but which incidence has no particular qualitative value on its polity to necessitate any labeling or categorization.[67] As a corollary to this, Yaro observes that 'a society, community, country or state could be said to be multi-religious in nature or outlook when its citizens or those who live in it profess many and essentially different religious beliefs. He then quotes Bappa's assertion about the multi-religious nature of the Nigerian polity as follow:

> By the variety of its religions, Nigeria can be classified as a country of multi-religious society. It has the Muslims, Christians and traditional Religionists.[68]

The multi-religious nature of Nigeria does not give room for any religion to be regarded as a State religion. It is this conception that some people misconstrued to mean that Islam will become a State religion if *Sharī'ah* is allowed; hence they ignorantly or mischievously called Nigeria a secular State. It then becomes necessary at this juncture to say that multi-religious nature of Nigeria should not give room for undue suppression of the religious rights of others. Muslims, wherever they may be in this country, have the constitutional right to be judged in accordance with their religious law.

Moreover, the fear of some people that if *Sharī'ah* law is officially allowed to co-exist with English Common Law, there will be clash of interest should be allayed. Legal pluralism is not peculiar to Nigeria. According to Yadudu, this phenomenon features prominently even in the United States of America and Canada. Within the engulfing sea of English Common Law tradition, which obtains in USA, one finds an Island in Louisiana State in which the civil law reigns supreme. A similar example can be found in Canada where the French-speaking Quebec is not only famous for its French cuisine; the region has also retained the French Civil Codes and Legal institutions. While commenting on the USA plural legal system, Marryman asserts that '… there are one federal and fifty state legal systems.'[69]

More importantly too, the multi-religious nature of Nigeria calls for legal pluralism. It is the belief of pro-legal pluralism group that the existence of divergent legal systems within a political unit is but a reflection of the diverse background of the ethnic, cultural and religious component groups making that unit up. What is more, these diverse traits have pre-dated the state itself.[70]

The advocates of legal pluralism in Nigeria include the Muslims who feel that it is an avenue through which one of their fundamental rights of adjudicating in accordance with their religious law can be fulfilled. Although the existing Nigerian legal system is not truly pluralistic, it is the contention of the pro-legal pluralism group that *Sharī'ah* legal system will be autonomous and self-regulating under a full fledged plural legal system.

5.2 Muslims' attitude to *Sharī'ah* application

It has been observed that the attitude of some Muslims to *Sharī'ah* application in some parts of the world has not been encouraging. There seem to be a sort of lackadaisical attitude of some Muslims to the application of *Sharī'ah* not only in Nigeria but in some Muslim countries too. This has therefore affected the application of *Sharī'ah* to a great extent. Attempt is made here to look at the attitude of the Muslims to *Sharī'ah* at the global level before discussing the experience in Nigeria, particularly our area of study.

For centuries, the *Sharī'ah* system, impressing the world with a multi-dimensional world-view, provided an Islamic perspective on every human endeavour. But then came the period of Colonialism when most of the Muslim world came under the rule of European imperial masters. Colonialists introduced various 'reforms' including changes in the Divine system of law which is known under the name of Anglo-Mohammedan Law, Franco Mohammedan Law, etc. These 'reforms' produced serious side effects and cultural tension in the Muslim world. The rise of the Westernized Muslim elites with their dangerous compromises on fundamental issues endangered the Muslim world. Their baneful effect still persists till today even after the yoke of colonialism had been thrown away. Unfortunately, some Muslims in the Middle East, Asia and Africa have almost lost their Islamic identify.[71]

Consequently, many Muslims in the Muslim lands became affected by colonialism and began to sing the songs of the colonialists. This brought about anti-*Sharī'ah* attitude of some Muslims. While analyzing the factors responsible for this, Doi observes that:

> there are three main agents for it. These are:
> imperialists, Muslim Rulers and Leaders and
> Western-Educated Muslim Elites or *Ulam*ā *'as-sū'* [72]

As much as we agree with Doi's position on these three main agents, the idea of placing Western educated Muslim elites and *Ulamā 'as-sū'* on the same pedestral seems to be a misinformation of fact. *Ulamā 'as-sū'* which means devilish scholars cannot be equated with Western educated Muslim elites. These are two separate things. Rather than consenting to grouping them together, we are of the opinion that third agent should only be addressed as *Ulamā 'as-sū'*.

While analysing the agents, Doi observes that the imperialists created doubts in the minds of Muslims and demoralized them so much that in their inferiority complex, the colonized Muslims began to sing praises of their imperial masters and welcomed their system of government, economics and law.[73]

As for the Muslim Leaders and political rulers, they were in the habit of imitating the views and analysis of their Eastern or Western counterparts. The Western or Eastern 'experts' framed their concepts, information and policies and codified their laws according to their own point of view and gave the impression that they would benefit no one but the Muslims. Habib Bourghiba of Tunisia for example, invited Rev. Professor Anderson to formulate and codify Islamic law for his country. At one state, in his misguided zeal, he proclaimed that the Muslim workers must not fast in the month of Ramadan, a *Farī dah* from Allah, so that the economic output of the country may not suffer. The *Sharī'ah* injunction of *satrul-'awrah*, covering of nakedness, was considered as a sign of backwardness, and inspired the Tunisian women to dress like European. The same is the case in Kamali's Turkey.[74]

In the case of *Ulam*ā *'as-sū'*, Doi observes that some of our Muslim elites today think and talk in second hand terminologies often trapped in alien value-

judgements. They pass pungent remarks against *Sharī'ah* following the foot-steps of their orientalist teachers and friends, at times to achieve selfish ends. According to Doi, there are some damaging remarks passed by one Professor Asaf Fyzee, a Muslim expert' in Islamic Law, which could be considered more damaging than what 'Christian experts' wrote. One of such remarks as quoted by Doi goes thus:

> We have seen that *Sharī'ah* is both law and religion. Law is by its very nature subject to change. The heart of religion on the other hand is not subject to change, or at any rate, the belief in God is an unchangeable ideal, a perennial quest. If two of such divergent forces are made to live together there will be strife. It is this strife, which is the main object of this paper. My solution is (a) to define religion and law in terms of 20th century thought, (b) to distinguish between religion and law in Islam and (c) to interpret Islam on this basis and give a new meaning to the faith of Islam. If by this analysis any element that some have regarded as part of the essence of Islam perishes, then we have to face the consequence.[75]

The above three factors which Doi mentions as responsible for the attitude of Muslims, to *Sharī'ah* in Muslim lands are experienced in Nigeria too. The factor of imperialism influenced some Muslim leaders in the Northern part of the country to agree to the modernization of *Sharī'ah* law. For example, the government of late Sardauna of Sokoto was said to have set up a study group of learned experts in Muslim law which visited Muslim countries such as Sudan and produced a report on the strength of which the then Northern Nigerian government replaced the whole of *Sharī'ah* criminal law by a comprehensive criminal code.[76]

While expatiating on the replacement of *Sharī'ah* criminal law by a criminal code, Sulaiman[77] asserts that "Muslim law of evidence (and) procedure was similarly replaced by legal enactment. That reform which took place as long ago as 1961 marked the end of the application of Muslim Criminal Law per se any where in Nigeria. The *hadd* punishment, the *qasam* (oath) procedure and all the role of *waliya jini* (guardians of blood) in homicide cases ceased to be applied."[78] The situation remained so until 1999 when Zamfara State *Sharī'ah* initiative brought about a change to *Sharī'ah* law in the country. Certain criminal aspects of

Sharī'ah law which were hitherto replaced with penal code were reintroduced in the State.

Moreover, in an attempt to give details of the effect of imperialism on the attitude of Muslims to *Sharī'ah,* Sulaiman quotes Martin Dent's statement in the article published in the New Nigeria of 28th April, 1978 where he says that "If there can be a certain relaxation of the tension between religions, we shall find that Muslims themselves are the most effective modernizers of their own religious institutions. Those who seek to pressurize them from outside make the modernizing process more difficult. In situations of polarization and perceived threat to one's identity a group turns in upon itself and may refuse to change with the times." Making summary analysis of the statement of Martin Dent, Sulaiman concludes that:

> Martin Dent's argument, therefore, centres on the preposition that in reality Muslims are their own worst enemies and that if only those who are opposed to *Sharī'ah* could but exercise some patience, Muslims could be trusted to destroy the House of Islam with their own hands.[79]

It is equally evident that some Muslim leaders are not favourably disposed to *Sharī'ah.* This may be either out of their hypocritical disposition to it or because they are ignorant of its significance to Muslims. It is most likely too to be as a result of the Western influence which we have mentioned above as influence of imperialism. Even as Muslims are now becoming more and more aware of the need to revert back to *Sharī'ah* as a solution to their problems, their leaders are not so convinced about it. It is on the basis of this that a Muslim scholar observes thus:

> This urge for *Sharī'ah* of the Muslim Ummah has been generally ignored by our leaders and policy-makers. Our slavery of decades, the remendous impact of Western culture, the glamour of irreligious social systems and secular education, devoid of higher values of life, de-Islamised the outlook of many Muslim rulers, administrators and intellectuals more than the ordinary people.[80]

The Muslim title holders in Yorubaland who are expected to use their wealth and position to fight for the course of Islam and *Sharī'ah* could not be said to have done much in respect of the demand for *Sharī'ah* having in mind that it will affect their interests; hence they were not ready to identify themselves with the protagonists of *Sharī'ah.* Akintola points to this fact thus:

> Many Muslim title holders in the South are yet to fully identify themselves with the protagonists of *Sharī'ah***.** Some wealthy ones among them show little or no concern.[81]

There are however a few Muslim leaders and title holders who support *Sharī'ah* fully. One of such people was late M.K.O. Abiola who championed the course of *Sharī'ah* in action and with his wealth. The National Concord, owned by this great Muslim philanthropist happened to be one of the leading newspapers that defended the course of *Sharī'ah* when he was alive. The Aare Musulumi of Yorubaland, Alhaji Abdul-Azeez Arisekola Alao is also noted to have championed the course of *Sharī'ah.* He has in the recent past spoken vehemently in favour of *Sharī'ah* at public functions and during interview by the press. This probably, is the reason why Akintola describes him as the only wealthy Muslim who has broken the ice. He says further that, "he (Arisekola) has lived up to expectation as the generalissimo of all Yoruba Muslims (Aare Musulumi of Yorubaland) by defending and projecting the Islamic legal system in the South."[82]

The attitude of Muslim elites to *Sharī'ah* deserves being discussed here. It has been noted that there are some Muslim elites that would be described as antagonists of *Sharī'ah* based on their attitude or comments. These people feel that introduction of *Sharī'ah* is uncalled for basing their opinion on the fact that Nigeria is a 'secular' state and the common law is okay with them. Some others who support the application of *Sharī'ah* only show interest in the aspects of law of personnel status and say that the criminal aspect should be jettisoned because they are cruel and violate constitutional provision. The claim of such Muslim elites is evident in the statement of Late Dr. Hamed Kusamotu, a Muslim and constitutional lawyer. As much as he supports the introduction of *Sharī'ah,* he is of the opinion that the *Sharī'ah* punishment should not be there because they violate another

constitutional provision which stipulates that no citizen shall be subjected to cruel punishment. He said:

> What it is, is different from what it ought to be. We allowed what is ought to be to get precedence from what it is… It ought to be that the introduction should not go to the extent of the punishment. *Sharī'ah* is not a law that is bad… when penal code was introduced to the North, all those punishment which were not good enough were not used for the offences. They winnowed them, lowered them, if you like.[83]

We could also assess the attitude of some Muslims to *Sharī'ah* through their submission during opinion polls conducted by some print media. Akintola observes that in the publication of Post Express of 23rd of March, 2000 titled "what Nigerians say about *Sharī'ah,* the only Muslim out of about six persons interviewed submitted that *Sharī'ah* should not be introduced in any state of the Federation. Similarly, out of the nine people whose opinions were sampled on *Sharī'ah* in the Sunday Sketch published in July, 2000 the only Muslim there was anti- *Sharī'ah.*[84]

The most unfortunate thing is the fact that the attitude of some Muslim preachers and Imams to *Sharī'ah* could be described as damaging. Some of them say that the demand for the introduction of *Sharī'ah* in some other parts of the country is uncalled for. They seem to share the same opinion with those influenced by the imperialists saying that Nigeria is a secular state and any attempt to introduce *Sharī'ah* will bring about tripod system of law in the country. The case of Shaykh Muhydeen Bello, a renowned Yoruba Preacher is a reference point here. He waxed a record titled '*Sharī'ah'* in the year 2001 where he condemned the involvement of politicians in the *Sharī'ah* affairs, saying that they cannot use it to campaign for us. There are other Muslim scholars like that, who rather than keeping silent on the issue of *Sharī'ah* in their public sermons condemned its introduction in Zamfara and some other states of the North calling it "political *Sharī'ah."*

The negative attitude of some Muslims to *Sharī'ah* is even confirmed by the questionnaire administered on this study. Our findings in Oyo and Osun States through Muslim respondents show that there are some Muslims in these states who

do not support the introduction of *Sharī'ah* in the States. Details of the result of the questionnaire administered are given under data analysis and results.

5.3 *Sharī'ah* and the non-Muslims of the states

The attitude of the non-Muslims in Oyo and Osun States constitutes a problem to the official introduction of *Sharī'ah* in these states. They have, at one time or the other, showed their opposition through various actions, which require being examined. It is on the basis of this we have also made effort to look at this area.

The term "non-Muslims" refers to two categories of people. The first category consists of people who follow revealed religions recognized by Islam. They are known as *'Ahl-adh-Dhimmah* – people of covenant or *'Ahl-al-Kitāb* – people of the book. In legal usage, it means people whose faith, life, property and other forms of freedom are guaranteed for safety by the Muslims acting according to *Sharī'ah.*[85] These are the Christians and the Jews. The second class of non-Muslims are those who are not recognized as possessing a revealed religion worthy of protection.[86] In our discussion here, we are particular about the first category of non-Muslims and our attention will focus the Christians since they are the people we have in these States in particular and possibly in Nigeria as a whole.

It has been noted that any attempt by the Muslims to demand for *Sharī'ah* is being frustrated by the Christians. Doi mentions the Methodist as the first Church in Nigeria to so oppose *Sharī'ah* when people in the Southern parts of Nigeria began to demand for *Sharī'ah* Courts in their areas. The Bishops of the Church in Nigeria asked the Federal Government to ignore the call and said that the government should instead try to encourage tolerance implying thereby that the call for *Sharī'ah* was tantamount to preaching intolerance while opposing *Sharī'ah* was tolerance.[87]

The opposition of the Christians to *Sharī'ah* is believed in some quarters to be part of the tactics of the imperialists who were ready to prevent the application of *Sharī'ah.* This is the reason why, according to Sulaiman, there is Christian lobby, which acting upon instigations from Western nations, has mounted a stiff

opposition against any attempt by Muslims to order their lives in accordance with the dictates of their law, (*Sharī'ah*).[88]

Moreover, the opposition of the Nigerian Christians to *Sharī'ah* comes up in any part of the country and takes various dimensions. It has come in form of public condemnation in the media, at seminars, symposia and lectures. In fact many write-ups have been put up by the Christians saying all sorts of things about the *Sharī'ah.* A book written by K.O. Abd al-Masih and M.J. Ibn Salam titled "what you have not heard about the *Sharī'ah* question" seems to be the worse of them all. Apart from total condemnation of *Sharī'ah* which the book tries to do, there is misrepresentation of facts about Islam in it. For instance, the authors give the impression that declaration of *Sharī'ah* in any State implies declaration of Islamic state.[89] This is raised in the introductory chapter of the book; hence, while making their conclusion in the last chapter of the book, they remark thus:

> From the foregoing, we conclude that it is not possible to allow any State in Nigeria to declare itself an Islamic State without infringing upon people's constitutional rights. Such cannot happen in the modern Nigeria without serious troubles.[90]

It must be noted at this juncture that one serious attack or condemnation or blackmail which the authors of this obnoxious book made on *Sharī'ah* needs to be remarked here. It goes as follows:

> In all countries where *Sharī'ah* has been experimented, two things are evident: (a) No social justice and (b) No true democracy but oppressive dictatorship.[91]

Based on what *Sharī'ah* stands to bring in any society where it is operated, social justice is the most prominent. For any body to say that there is no social justice where *Sharī'ah* is applied is an attempt to give a dog bad name in order to hang it. Secondly, *Sharī'ah* abhors in its entirety dictatorship let alone of being an oppressive one, while *Sharī'ah* enjoins true democratic governance in any society or nation. What operates in some countries should not be used as a yardstick to condemn *Sharī'ah* system. We therefore observe here that the authors are biased

against *Sharī'ah* system. Without any prejudice therefore, we say that what *Sharī'ah* primarily aims to eradicate in the society are social injustice and oppression.

The opposition of the Nigerian Christians to the *Sharī'ah* despite the assertion that *Sharī'ah* concerns Muslims alone was borne out of some fears which the Christians have. One of such is the fear that allowing the introduction of *Sharī'ah,* particularly the full scope, in any state of the country, is tantamount to Islamising Nigeria and declaration of it as an Islamic state. This fear is succinctly and unequivocally expressed by Chief D.D. Dodo, a Christian cleric when he says:

> The adoption of full scope of the *Sharī'ah* is seen as a surreptitious way of eventually declaring Nigeria as an Islamic State thereby converting all non-Muslims into second-class citizens without the right to become the President of Nigeria nor a State Governor.[92]

In addition to above, it has been noted that another major fear being nursed by the Christians is the influence *Sharī'ah* is likely to have on Christianity. It is believed that should *Sharī'ah* be allowed to be applied in any State, it is most likely that many non-Muslims may tend towards appreciating Islam and eventually embracing it, having seen the positive effects of *Sharī'ah* on the society. This, they believe, will have serious negative effect on Christianity. Having sensed this therefore, all efforts were geared towards using all machinary at their disposal to attack *Sharī'ah*.

Dodo observes further how *Sharī'ah* affects Christians adversely and why Christians are saying "No" to it. He asserts thus:

> Some Muslim leaders said that the implementation of the full scope of Islamic *Sharī'ah* law in Nigeria would not affect Christians and other non-Muslims. I wish to state categorically clear without mincing words that any Muslim who says so is not telling the truth, because there is a saying in Hausa language that 'Zama da madaukia kan wa ya kan kawo farin kai, "meaning in direct translation that 'staying with a person who carries potassium would make one's head white.' In other words, one is bound to be affected by what ever his neighbour is doing as the saying

> goes that 'a man of faith is like a burning fire, one cannot come near him without feeling the heat'. And true to this saying, the Muslims are people of faith, they are believers, so, to say that Christians and other non-Muslims can live with them without their way of life affecting the non-Muslims is not only a lie but also a deceit.[93]

Similar view is shared by another Christian cleric, John Onaiyekan the Catholic Archbishop of Abuja who posits that, *Sharī'ah* does not concern only Muslims as claimed by some people but it concerns all Nigerians. He opines thus:

> Some people keep insisting that the *Sharī'ah* concerns only Muslims, and that other Nigerians need not worry about it. Unfortunately, as the debates and controversies generated in the recent months are unfolding, it must be clear to anyone who wants to be realistic that it indeed concerns all Nigerians.[94]

In view of the above submissions, Christians seem to be all out to attack *Sharī'ah* and oppose its introduction anywhere it is to take place. Some have even gone to the extent of campaigning or clamouring for the removal of anything *Sharī'ah* from the constitution. In the opinion of these people, the removal of *Sharī'ah* from the Constitution of the Federal Republic of Nigeria is the only way to save the country from future violent religious crisis, because, according to them, it is discriminatory to the adherents of Christianity and other religions as if Nigeria is an Islamic Country.[95] To say it all, the following statement summarises the idea:

> When the 1999 constitution of Nigeria will be reviewed, the Islamic *Sharī'ah* law should be removed completely in the subsequent constitution and be observed and practiced the way Christians do with Ecclesiastia.[96]

The attitude of the Christians to *Sharī'ah* has been so negative and so uncompromising to the extent that they have made it known that no matter the dialogue, seminar or conference on *Sharī'ah,* their position will always be "No" to it. Onaiyekan gives this hint when he asserts as follows:

> It would be futile for anyone to hope that after a lot of explanation, Christians will finally settle for and agree to the *Sharī'ah***.** Indeed, when they say No, it is a position taken out of full knowledge and often bitter experience of the implications on the Christians.[97]

Moreover, our interactive sessions through oral interview with some Christian leaders in Oyo and Osun States buttress the fact that the position of Nigerian Christians on *Sharī'ah* seems not different from one place to another. While they believe that *Sharī'ah* is a code of law or body of guide for the Muslims, they disagree with the involvement of the government in its application. It is argued that if *Sharī'ah* is for Muslims only, it should be applied in such a way that there will be no imposition on the non-Muslims and there will be no involvement of the government. The Chairman of Christian Association of Nigeria (CAN), Osun State branch in his reaction to what could be the disposition of the Christian community of the State to official introduction of *Sharī'ah* in the state made this submission:

> I have been questioning why *Sharī'ah* has become a problem if only it was done and used by Muslims alone. There should not be a problem at all and I said why is government at all involved?[98]

The Osun State CAN chairman then suggested the application of *Sharī'ah* by the Muslims on private basis as they handle what he called 'Code of Canon Law' in the Catholic Church. While probing why the Christians feel threatened by the introduction of *Sharī'ah,* he said, "it is never out of the fact that they are afraid of *Sharī'ah* but if they say "NO" to *Sharī'ah,* the "NO" to it is that they do not want it imposed on them, not because they are afraid, but because they are not Muslims".[99]

Moreover, when the opinion of Osun State CAN Chairman was sought on what could be the reaction of the Christian Community of the State should the Muslims of the State demand for the establishment of *Sharī'ah* Court of Appeal as stipulated in the Nigerian Constitution and as it is practiced in some States like Kwara State, he remarked that "this should be democratically done by seeking the opinion of the public. It should not be imposed". He however contended that since

Sharī'ah is for the Muslims, they should be left to handle *Sharī'ah* matters themselves without the involvement of the government. He opined thus:

> May be I would have to say why at all should the government of the state or government of the nation get involved in religion at all… But as to how to use *Sharī'ah,* I think government should get out of that and leave Muslims with *Sharī'ah***.** Leave Catholic Church with Canon law and Anglican with their Code of Canon law too.[100]

The situation in Oyo State is not different. Our interaction with a Christian Leader of the Ibadan North Anglican Diocese to feel the pulse of the Christian Community of Oyo State shows that the disposition of the Christians in the State to *Sharī'ah* is not favourable too. While venerable Olatinwo Adeagbo Fatoki of Ibadan North Anglican Diocese agrees with the fact that *Sharī'ah* has been part of Yoruba tradition through the popular slogan "e da seria fun-un" i.e. "give out judgment to him according to *Sharī'ah",* he however did not support the idea of introducing it in the state for two reasons. The first, according to him, is that each family in the state is blended or mixed with Muslims and Christians; hence *Sharī'ah* does not fit in. Secondly, there is the fear of extremity whereby some people will carry it to the extreme and misuse its application. He then argued that should the *Sharī'ah* be granted to the Muslims, do we expect the Christians too to go for Canon Law? He then concluded that with the existence of Common Law, *Sharī'ah* Law is unnecessary.[101]

Although, Venerable Fatoki agreed with the fact that there is nothing bad in the *Sharī'ah,* he however argued that it cannot be effective in this part of the country where some adherents of Islam are not in support of it. He expressed the fear of Nigerian factor which may lead to abuse and mis-application of the law. He opined that introduction of *Sharī'ah* would allow multiplicity of law which may create chaos in the society. Therefore, Common Law should be allowed to take care of punishment of sins committed by citizens; he opined.[102]

Apart from the above, the attitude of the Christians in Oyo and Osun States is also felt through the questionnaire. Although there are few respondents who expressed support for the establishment of *Sharī'ah* Courts in the two states, the

majority of the Christian respondents did not support it. The detail of this is discussed under result analysis.

From the foregoing, it is noted that the Christians of the two states are not favourably disposed to the introduction or establishment of *Sharī'ah* Courts in these states. This attitude is therefore considered as a problem of which the Muslims in the states have an enormous task to tackle. From the look of things, the Christians seem to be resolute in their decision that their position will always be "No" to *Sharī'ah,* no matter the convincing arguments of the Muslims. It is our opinion therefore that the way forward in this situation is dialogue, enlightenment on *Sharī'ah* and religious tolerance.

5.4 *Sharī'ah* and the Nigerian Constitutions

One other problem area for *Sharī'ah* in this part of the Country lies with the constitutional provision. The problem is not connected with whether *Sharī'ah* is constitutional or not since every constitution we have had right from independence, had made provisions for *Sharī'ah.* However, the problem lies with the conditional provision which has made it optional for any State that wishes to establish *Sharī'ah* Court of Appeal. This conditional constitutional provision for *Sharī'ah* makes things difficult to some extent in the Southern part of the Country, particularly Yorubaland where our study area falls. It is on this note that attempt is made here to examine this problem.

A Muslim Court of Appeal which was later known as the *Sharī'ah* Court of Appeal was established for the Northern Region of Nigeria in 1956. It was by the Northern Nigeria *Sharī'ah* Court of Appeal Law 1960 that the former Muslim Court of Appeal of Nigeria became the *Sharī'ah* Court of Appeal of Northern Nigeria. Both the Northern Nigeria Constitution 1963 and the Constitution of the Federal Republic of Nigeria 1963 recognised the existence and jurisdiction of the *Sharī'ah* Court of Appeal for the former Northern Region of Nigeria.[103]

Although, the 1963 Constitutions of the Northern Region of Nigeria and the Federal Republic of Nigeria respectively did not specifically establish *Sharī'ah* court of Appeal at the Regional level, the Draft constitution of 1976 and the

Constitution of the Federal Republic of Nigeria 1979 specifically established the *Sharī'ah* Courts of Appeal at the State and Federal levels.[104]

The 1976 Draft Constitution proposed the establishment of the Federal *Sharī'ah* Court of Appeal which shall consist of a Grand Mufti, a Deputy Grand Mufti and such number of Muftis not being less than three as may be prescribed by or under an Act of the National Assembly. The proposed function of such court was to hear appeals lying from the States' *Sharī'ah* Courts of Appeal. The Draft goes further to propose the establishment of a *Sharī'ah* Court of Appeal for such State. Such a *Sharī'ah* Court of Appeal of the State shall, according to the Draft Constitution consist of Grand *Qāḍi* and such number of *Qāḍis* as may be prescribed by the Legislature of each State.[105]

The Constitution Drafting Committee's proposal as stated above which proposed the establishment of *Sharī'ah* Courts at State levels throughout the Federation and that a Federal *Sharī'ah* Court of Appeal be established as well, was what triggered off the *Sharī'ah* controversy in 1978 and which has continued to rage till this time.[105] It was as a result of this controversy that the 1979 constitution stipulated conditional provision in section 240 sub-section (1) as follows:

> There shall be for any state that requires it a *Sharī'ah* Court of Appeal for that State.

It is to be mentioned here that as the application of *Sharī'ah* in the North on civil matter was not in contention, the situation was not so in the South. It was as a result of this that memoranda were submitted by various Islamic bodies to the Constitution Drafting Committee set up in 1976 by the Murtala Muhammad Military Administration, calling for the extension of the application of *Sharī'ah* to newly created States of Oyo, Ogun and Ondo in the South-West of the Country.[106] It could be this that led to the proposal of the Draft Committee for the establishment of *Sharī'ah* Court of Appeal at all States of the Federation but was not allowed to see the light of the day.

Similarly in 1988, on the floor of the Constituent Assembly convened by the Babangida Military Administration, much political heat was generated during the debate on the application of *Sharī'ah* in the Country, which threatened to melt

the unity of the fragile Federation. As in 1978, wiser counsel prevailed and the burning issue was resolved through a compromise namely, that any State that requires a *Sharī'ah* Court of Appeal may establish one.[107] Moreover, the 1999 Constitutional provisions in respect of the *Sharī'ah* are identical with those of the 1979 Constitution. Therefore, establishment of *Sharī'ah* Court of Appeal is still optional in the 1999 Constitution since it could only be established by the State that requires it.

In view of the above, the Constitutional problem being faced by *Sharī'ah* in this study area lies in the optional nature of the constitutional provision on *Sharī'ah*. One may ask how and in what ways could a State require the *Sharī'ah*? Is it the duty of the people i.e. the Muslims who are to be adjudicated upon by it who have to request for it, or is it to be mandatorily established in a State where there are Muslims by the Government of the State? These are questions to which satisfactory answers could not be provided leading to the problem *Sharī'ah* application is facing constitutionally.

Although, Justice Abdul-Kadr Orire, the former Grand *Qāḍi* of Kwara State attempted to provide answers to such questions, yet the problem has not been over. It is the contention of Justice Orire that it is the same constitutional provision in respect of Customary Court of Appeal, which some State in the Country had used in the establishment of Customary Court of Appeal in their States. Similarly, such gesture could be used to establish *Sharī'ah* Court of Appeal since the provision is identical.[108] However, the problem lies in the fact that since majority of people at the helm of affairs in the two States of study are non-Muslims, they will not be favourably disposed to such action. Where the leadership is considered to be a Muslim, he may not be so courageous to take such a bold step.

The other option which Justice Orire proposed is that the Muslims in this part of the country should unite in each State to approach the authorities through memoranda seeking for the promulgation of law to establish both Muslim Courts as well as *Sharī'ah* Court of Appeal to hear both cases from the grassroot and on appeals. This is to be made through the State Houses of Assembly.[109] As good as this proposal is the fact remains that the Muslims in the States have not been able to utilize this opportunity either as a result of their lackadaisical attitude or because

of their little or no knowledge of how to go about this constitutional provision on *Sharī'ah*.

Apart from the aforementioned, the problem also lies in the fact that based on this constitutional provision, the request for *Sharī'ah* in any State has to pass through the House of Assembly of such State and the Bill for such a request must be signed into Law by the Executive Governor of the State. Here therefore, lies the problem. Should the Muslims sponsor a Bill on *Sharī'ah*, would the House of Assembly of such State comprising of Muslim and Christian members be ready to pass the bill into Law? Would the ratio of Muslim members compared with the Christian members not create a problem? Even where the Muslim members outnumber the Christian members, would the Muslim members be favourably disposed to it either as a result of their level of commitment to the course of *Sharī'ah* and Islam or because of their loyalty to their party? What of a situation whereby the Executive Governor is a non-Muslim and he is not favourably disposed to *Sharī'ah*? These and many other questions have therefore left this constitutional provision on *Sharī'ah* as a problem in this part of the Country.

This problem is even always compounded by the disposition of the non-Muslims, particularly the Christians, to *Sharī'ah* as discussed earlier. It is even the wish of some of them that this provision on *Sharī'ah* be deleted in our constitution. Chief D.D. Dodo suggests this when he remarks thus:

> When the 1999 Constitution of Nigeria will be reviewed, the Islamic *Sharī'ah* law should be removed completely in the subsequent constitution and be observed and practiced in the way Christians do with the ecclesiastia.[110]

Moreover, it is the wish of the Christians that opinion of the public should be sought before *Sharī'ah* is established. This is expressed by the Osun State Chairman of Christian Association of Nigeria (CAN) during our interview with him.[107] It is therefore our opinion that should the *Sharī'ah* issue be subjected to public opinion/debate for its establishment, the Christians will definitely antagonize it based on their disposition to it.

Based on the above premise, we wish to submit at this juncture that the Nigerian constitutions since independence to this period have not made the

situation conducive for the application of *Sharī'ah* in this part of the Country. It has created a problem for it rather than solving it. As it could be said that there is a constitutional provision for *Sharī'ah* application, the clause to it has made it more complex than expected. Therefore, the problem can only be thrashed if certain things are done. Akintola sumarises these as follows:

> We must quickly assert, however, that the ease and readiness with which the machinery for this is set in motion in a State will be determined by the level of solidarity among the Muslims in the State, the extent of the love of justice and fair play among the citizens of the State and the liberalism or fanatics manifested by a State Governor and its Assembly.[111]

5.5 Establishment of *Sharī'ah* Courts in the states

The establishment of *Sharī'ah* Courts in a State where they have not been established before requires the political will of the State's House of Assembly. This seems to cause a problem for the States under study. Although the issue is like the constitutional problem, which has just been discussed, it is necessary to look at this area too with a view to assessing where its own problem lies.

The power to establish a Court is vested in the House of Assembly of a state, which is to pass a Bill that will be signed into Law by the Governor of the State. Since the Constitution does not make it mandatory on the House of Assembly to pass a Bill to establish *Sharī'ah* Courts in any State, it becomes a problem for the Muslims of that state to get *Sharī'ah* Courts established. The 1999 Constitution states in section 275 that "there shall be for any State that requires it a *Sharī'ah* Court of Appeal for that State"; therefore, the clause in this provision has made it a problem for the Muslims to achieve.

The question that may be asked is that what shall indicate that a state requires a *Sharī'ah* Court of Appeal? While trying to answer this question, justice Orire contends that some people say that there must be a move to educate people on what *Sharī'ah* is and that the entire Muslims in a state have to write memoranda signed by millions of them to demand for *Sharī'ah* Court of Appeal from the authority of that state.[112]

If the above situation applies to *Sharī'ah,* one may be forced to ask whether similar situation was used in the establishment of Customary Courts of Appeal, in many parts of the country both in the North and South, when Customary Courts constitutional provision is identical with that of *Sharī'ah.* In fact, many States in Nigeria, relying on the provision of the constitution established Customary Courts of Appeal in their States.[113]

Although most of these Customary Courts of Appeal were established during the Military era through promulgation of edicts or decrees as the case may be without consulting anybody. The same method should have been used to establish *Sharī'ah* Courts of Appeal in any part of the Southern States. The reason for not doing it may be connected with the fact that most of the Military Governors were Christians who bothered not about the concerns or rights of the Muslims.[114]

However, it is to be mentioned at this juncture that it is on record that some Muslims leaders in the old Oyo State prepared and signed memoranda to the Military Governor of Oyo State between 1987 and 1988 demanding for the establishment of *Sharī'ah* Court of Appeal in the State.[115] This request was not granted. It is the believe of some people that it is the duty of the Government of any state to establish *Sharī'ah* court of Appeal in such state once there are substantial number of its population who are Muslims just as the government established Muslim Pilgrims Welfare Board for its Muslim population, it is also mandatory for it to establish a *Sharī'ah* Court of Appeal for its citizens who are Muslims. It is not something that should be left for the Muslims to demand.[116]

As good as the above submission is, no State Government is ready to do so; hence the problem of establishing *Sharī'ah* Courts of Appeal remains unsolved. It is therefore assumed that the only solution to the problem is to go through the State House of Assembly. However, this medium too has its own problem. It is to be remarked here that a Muslim group in Oyo State prepared and submitted a Private Bill to the Oyo State House of Assembly during the regime of Governor Lam Adesina for the establishment of *Sharī'ah* Court of Appeal in the State. As good as the Bill was, it was not given any recognition by the House of Assembly.[117]

The non-recognition of the Bill by the then Oyo State House of Assembly was connected with a number of factors. The first factor is the inability of the Bill

to receive the support of all Muslims of the State. It was sponsored by some Muslims who were anxious to have *Sharī'ah* Court of Appeal established in the State. They did not however carry majority of the members of the Muslim Community in the State along; hence they failed in their bid.

Secondly, the disposition of members of the then Oyo State House of Assembly to the Bill was unfavourable. Our interview with the leadership of the House informed us about this. The then Speaker of Oyo State House of Assembly, Honourable Asimiyu Niran Alarape confirmed the receipt of the Bill but said such Bill could not be passed by the House because of the heterogeneous nature of the State. He states thus:

> Although the Constitution states that "any state that requires for *Sharī'ah* could be given" but Oyo State Government has not been using it and looking at the sensitivity of the matter, a situation whereby the society is of diverse culture and religion, and looking at the heterogeneous nature of the society, it will be difficult for the House to pass the Bill on *Sharī'ah* into Law.[118]

The Speaker of the House argued further that the House could not consider the Bill because the two religions – Islam and Christianity co-habit peacefully and nothing should be done to disturb that peaceful co-existence. He stated that in a situation whereby the members of the House are seventeen to fifteen Muslims and Christians respectively, it will be difficult to present *Sharī'ah* Bill to the House, for there may be some Muslim honourable members who will vote against it, giving the Christians an edge on the matter. Therefore, the position of the House can disallow the Bill to be passed into Law. He opined further that, although Muslims could be said to be in the majority in the House, the Christians may have the majority against *Sharī'ah* when for example, only two out of the seventeen Muslim members switch to their side.[119]

This position of the Speaker vindicates our earlier submission that Muslims themselves are the enemies of *Sharī'ah* and that establishment of *Sharī'ah* Court of Appeal through the House of Assembly of either of the States under study is a serious problem. If a Muslim Speaker with majority Muslim Honourable Members cannot be ready to work towards passing a Bill on *Sharī'ah* in Oyo State into law,

it shows that a lot of challenges are on ground for the Muslims of this State to achieve their goal on *Sharī'ah*.

The situation in Osun State was almost similar to that of Oyo State. Although, no private Bill was sponsored to Osun State House of Assembly on the establishment of *Sharī'ah* Court of Appeal in the State, there was a memorandum sent to the House by the leadership of the League of Imams and Alfas in the State during the regime of Governor Bisi Akande on the Review of 1999 Constitution wherein the need for *Sharī'ah* in Osun State was unequivocally stated.[120] The interaction we had with the then Speaker of Osun State House of Assembly, Honourabe Majeed Olujinmi Alabi through oral interview reveals that the memorandum was received. He however observed that since it was on the Review of 1999 Constitution and not on the request for *Sharī'ah* in Osun State per se which was directly meant for the House, the memorandum was submitted to the committee responsible for collating the views of the people of Osun State for transfer to the National Assembly on the Review of 1999 Constitution and the Committee had actually done its work and its report had been sent to the National Assembly.[121]

While reacting to a question as to whether effort had been made by the Muslim Community of Osun State to request for *Sharī'ah* Courts from the House of Assemsbly, the Honourable Speaker said that there had not been any concrete effort towards the creation of *Sharī'ah* Courts or towards making the *Sharī'ah* legal system operative. He asserted that he heard that various efforts were made at constituting committees that would see to the possibility of submitting papers to the Osun State House of Assembly for the purpose of passing into Law the *Sharī'ah* legal system to become operational, but all these have remained futile attempts.[122]

The Speaker however expressed pessimism about the possibility of passing *Sharī'ah* Bill into Law even if the request should come. He remarked thus:

> But even then, assuming the memoranda were to come tomorrow, the configuration of the current legislature in Osun State is not such as to make it easy for such a Bill to be passed, especially when the introduction of *Sharī'ah* in other parts of the Country has resulted into controversies which affected significantly the psyche of almost every

> member of the House especially the non-Muslims and if one is to talk in the realm of people who will be willing to forcefully project the need for the passage of a Law on that, you are probably going to be talking of less than $^{1}/_{6}$ of the Honourable members of the House of Assembly, and that makes the passage of any such law very, very difficult.[123]

The argument of the speaker of Osun State House of Assembly on the impossibility of passing *Sharī'ah* Bill into law as stated above was based on the fact that the composition or configuration of the Honourable members was not to the advantage of the Muslims. According to the Speaker, there were only nine Muslim members out of the twenty-six Honourable members of the House. He even asserted that he cannot guarantee that sixty percent of the nine Muslim members would be willing to support *Sharī'ah* legal system by the comments they have made on the floor with regard to *Sharī'ah.*[124]

In view of the above development, it suffices to conclude that establishment of *Sharī'ah* Courts of Appeal in Oyo and Osun State would not be easy to come by. There are a number of problems facing it. These range from the inability of the Muslim communities of the two States to consolidate the machinery that would be utilized for that purpose, particular, ability to be united and speak with one voice on their demand for the establishment of *Sharī'ah* Courts of Appeal in the States. Secondly, the problem in the area of constitutional roles to be played by both the Legislative and Executive Arms of Government needs to be addressed. This can be done, by mapping out strategies as to how to get the problem solved. Solutions to this, is however discussed under recommendations.

5.6 **Methodology and discussion of results**

This section attempts to discuss the methodology employed in the conduct of the study i.e. the strategy and logistics used in administering the questionnaire which is the instrument for gathering and analyzing the data needed for the research. According to Obiyemi, research methodology refers to the general strategy and logistics that are employed in the conduct of a study, and precisely in the gathering and analyzing of the data needed for answering research questions or hypotheses formulated to direct the study.[125]

Moreso, one of the methodological elements for consideration according to Obiyemi, in this phase of the research report is the research design. Other elements of the research methodology include sample and sampling techniques and instrumentation. Methods of data collection and analysis constitute the other parts that make up the research methodology.[126] It is on this note that efforts are made to discuss those elements with a view to stating the strategy and logistics employed in the conduct of the study.

5.6.1 **Research design**

The research design for this study is a descriptive one. A descriptive research in education, according to Fajemidagba involves the collection of data for the purpose of describing existing conclusions. It may involve the exploration of an observed phenomenon in education or the description in a precise form of the characteristics of individuals, groups, people or a phenomenon in education.[127]

However, descriptive studies in education include surveys; hence survey research method was used in the collection of data. Survey method requires systematic collection of data or information from population, or sample of the population through the use of personal interview and or scale opinion questionnaire.[128] Both personal interview and scale opinion questionnaire are used here.

5.6.2 **Sample and sampling techniques**

A sample, according to Daramola,[129] is described as a selected group, which is a fair representation of the entire population of interest. Samples are described to be relevant in research when the size of the entire population is considered too large, not to be easily manageable by the researcher; the material resources and time available are inadequate for the entire population to be involved in a prospective research.

Daramola further observes, “a sampling procedure is a systematic process employed to select a required proportion of a target population. In research

language, a sample of a population is that representative which has approximately the characteristics of the target population under investigation"[130]

Purposive sampling technique is adopted here. This is a sampling procedure in which a researcher purposely selects certain groups as samples because of their relevance to the investigation under consideration.[131] Hence; the respondents to the questionnaire were selected from some educated public individuals in Oyo and Osun States in order to feel their pulse about *Sharī'ah*. Fifty respondents each from Muslims and Christians were randomly sampled in Oyo and Osun States respectively giving us a total number of one hundred Muslim respondents and one hundred Christian respondents from both States.

Since our target is to sample the opinion of people on the possibility of establishing *Sharī'ah* Courts in the two States, the two Houses of Assembly of Oyo and Osun States were not left out in this study. We extended our questionnaire to honourable Members of the two Houses of Assembly in order to have their views on the establishment of *Sharī'ah* Courts since they are the people empowered by Nigerian constitution to pass a bill to that effect in a state that requires it. However, out of the thirty two honourable Members of Oyo State House of Assembly, twenty members were randomly selected to respond to the questionnaire while out of the twenty six honourable Members of Osun State House of Assembly, twenty members were randomly selected too.

5.6.3 **Instrumentation**

The instrument used for this study consists of a questionnaire developed or constructed by the researcher to sample the opinion of the respondents. Although the questionnaire was constructed by the researcher, it was validated by questionnaire experts as well as the searcher's supervisor.

The questionnaire consists of two sections of various items and questions for the respondents to supply their feelings about the study. Section 'A' focuses on general information about the respondents. This includes gender, marital status, age, religion and state of origin.

Section 'B' centres on a number of questions on *Sharī'ah* with a view to sampling their opinion on *Sharī'ah* application in Oyo and Osun States. Questions

as to whether *Sharī'ah* is the right of the Muslims to be demanded for and whether they will be in support of the constitutional provision of establishment of *Sharī'ah* Courts were raised. All together, thirteen questions were raised in this section for respondents' reaction to them.

However, the respondents were asked to react to each of these questions by ticking small boxes in front of each question where Yes and No were provided.

5.6.4 **Data collection**

The researcher visited a few selected tertiary institutions as well as the two Houses of Assembly of Oyo and Osun States for the administration of the questionnaire. In the case of the tertiary institutions visited, the respondents were selected from Muslims and Christians of such institutions to fill the questionnaire and they were given time to complete it. This notwithstanding, they were monitored for security purpose.

As far as the Houses of Assembly of Oyo and Osun States were concerned, the researcher sought the permission of the Honourable Speakers of the two Houses of Assembly before copies of the questionnaire were distributed to the Honourable Members. It is to be mentioned at this juncture that the task of getting the questionnaire back from the Honourable Members was not easy at all. The researcher had to wait for some time before substantial number of the questionnaire could be retrieved.

5.6.5 **Data analysis and discussion of results**

The data collected were collated and analyzed using frequency, percentage, mean and weighted mean. In the analysis, respondents' choice of option to each of the question or item of the questionnaire was considered and scored accordingly. The scores were computed and indicated against the number of every item sampled.

This approach helped to ascertain the attitude of Muslims, Christians as well as the members of the Houses of Assembly of the two States to the application of *Sharī'ah* and the establishment of *Sharī'ah* Courts of Appeal in the two States.

However, in analyzing the data provided by the respondents in the questionnaire, simple frequency counts and percentages were used and the findings are reflected in a series of tables. The following tables show the major findings of the study.

Table 5.1. Level of awareness about *Sharī'ah* application in Oyo State

Respondents	**Yes**	**% of Yes**	**No**	**% of No**	**Total**
Muslims	36	72.0%	14	28.0%	50
Christians	10	20.0%	40	80.0%	50
House of Assembly Members	14	70.0%	06	30.0%	20
Total	**60**	**50.0%**	**60**	**50.0%**	**120**

The above table gives us the level of awareness of the respondents about the application of *Sharī'ah* in Oyo State at one time or the other. From the table, it was observed that out of the 50 Muslim respondents 36 claimed to be aware of *Sharī'ah* application in the State giving us the percentage as 72.0% while 14 claimed ignorance of it giving us 28.0%. 10 of the Christian respondents which are 20.0% claimed awareness of it while 40 which are 80.0% of the 50 respondents said "No". 14 Members of the House of Assembly which is 70.0% of the 20 respondents claimed awareness while only 06 representing 30.0% claimed ignorance of it. In the overall, out of the 120 respondents, 60 respondents representing 50.0% claimed awareness of *Sharī'ah* application in Oyo State while 60 representing 50.0% also claimed ignorance of it.

Table 5.2. Level of awareness about *Sharī'ah* application in Osun State

Respondents	**Yes**	**% of Yes**	**No**	**% of No**	**Total**
Muslims	44	88.0%	06	12.0%	50
Christians	12	24.0%	38	76.0%	50
House of Assembly Members	08	40.0%	12	66.0%	20
Total	**64**	**53.3%**	**56**	**46.7%**	**120**

This table shows the level of awareness of people of Osun State about the application of *Sharī'ah* in the State at one time or the other. While 44 out of the 50 Muslims respondents claimed awareness of it only 06 said "No", giving us 88.0% and 12.0% of the respondents respectively. From among the Christian respondents, 12 claimed to be aware while 38 said "No" giving us the percentage of 24.0% and 76.0% respectively. Only 08 members of Osun State House of Assembly out of the 20 respondents claimed awareness while 12 said they were not aware giving us the percentage of 40.0% and 60.0% respectively. In the overall total however, 64 respondents claimed awareness of application of *Sharī'ah* in the State at one time or the other while 56 claimed ignorance giving us the overall percentage as 53.3% and 46.7% respectively.

Table 5.3. *Sharī'ah* concerns Muslims only

Respondents	**Yes**	**% of Yes**	**No**	**% of No**	**Total**
Muslims (Oyo and Osun)	71	71.0%	29	20.0%	100
Christians (Oyo and Osun)	82	82.0%	18	18.0%	100
House of Assembly Members (Oyo and Osun)	28	70.0%	12	30.0%	40
Total	**181**	**74.4%**	**59**	**25.6%**	**240**

The above table shows the reaction of the respondents to whether *Sharī'ah* concerns the Muslims alone or not. It was observed that from the respondents in the two States, 71 out of the 100 Muslim respondents agreed to the fact that it concerns Muslims only while 29 disagreed having 71.0% and 20.0% respectively.

82 out of the 100 Christian respondents in the two States agreed to the fact that *Sharī'ah* concerns Muslims only while 28 respondents disagreed giving us 82.0% and 28.0% respectively. The total number of the members of the two Houses who responded was 40 out of which 28 agreed to the fact that *Sharī'ah* concerns Muslims alone while 12 disagreed giving us 70.0% ad 30.0% respectively. In the overall total however, from the 240 respondents of the two States, 181, which is 74.4% agreed to the fact that *Sharī'ah* concerns Muslims only while 59, which is 25.6% disagreed.

Table 5.4. Need for enlightenment and dialogue on *Sharī'ah* (Muslim respondents from Oyo and Osun States)

Points raised	Yes	% of Yes	No	% of No	Total
Sharī'ah is misconstrued	100	100%	-	-	**100**
It generates religious misunderstanding	93	93.0%	07	07.0%	**100**
There is need for enlightenment on it	99	99.0%	01	01.0%	**100**
There is need for Dialogue on it	95	95.0%	05	05.0%	**100**

The table above shows the response of the Muslim respondents in Oyo and Osun States on whether there is the need for enlightenment and dialogue on the *Sharī'ah* issue. Based on the table, 100% of the respondents agreed that *Sharī'ah* is misconstrued by people. 93 out of the 100 respondents were of the opinion that *Sharī'ah* generates religious misunderstanding while only 07 disagreed to it giving us 93.0% and 7.0% respectively. Out of the 100 respondents however, 99, which is 99.0% agreed to the need for enlightenment on *Sharī'ah* while only 01, which is 01.0% disagreed to that. Moreso, 95 respondents which is 95.0% agreed to the need for dialogue on *Sharī'ah* issue while only 5, representing 05.0% disagreed. It is therefore shown from this table that majority of the respondents supported carrying out enlightenment programme and dialogue on *Sharī'ah* issue.

Table 5.5. Need for enlightenment and dialogue on *Sharī'ah* (Christian respondents from Oyo and Osun States)

Points raised	Yes	% of Yes	No	% of No	Total
Shari'ah is misconstrued	85	85.0%	15	15.0%	**100**
It generates religious misunderstanding	85	85.0%	15	15.0%	**100**
There is need for enlightenment on it	98	98.0%	02	02.0%	**100**
There is need for Dialogue on it	85	85.0%	15	15.0%	**100**

This table explains the reaction of the Christian respondents in Oyo and Osun States to whether *Sharī'ah* issue requires enlightenment and dialogue. It is shown from the table that 85 of the 100 respondents representing 85.0% agreed that *Sharī'ah* is misconstrued while 15 representing 15.0% disagreed. The same

number and percentage respectively agreed and disagreed that *Sharī'ah* generates religious misunderstanding. However, 98 out of the 100 respondents representing 98.0% supported the fact that there is the need for enlightenment on *Sharī'ah* while only 2, which is 02.0% said no to it. In addition, 85 of the respondents, which is 85.0% agreed to the need for dialogue on it while 15 representing 15.0% disagreed. This, therefore shows that majority of the Christians in both States supported the need for enlightenment and dialogue on *Sharī'ah* in these States.

Table 5.6. Need for enlightenment and dialogue on *Sharī'ah* (Oyo and Osun Houses of Assembly Respondents)

Points raised	**Yes**	**% of Yes**	**No**	**% of No**	**Total**
Sharī'ah is misconstrued	35	87.5%	05	12.5%	40
It generates religious misunderstanding	40	100%	-	-	40
There is need for enlightenment on it	39	97.5%	01	01.5%	40
There is need for Dialogue on it	35	87.5%	05	12.5%	40

The table above shows the responses of the respondents of the Houses of Assembly of the two States to whether enlightenment programme and dialogue need to be embarked upon on *Sharī'ah*. While majority of them which is 35 out of 40 representing 87.5% agreed with the fact that *Sharī'ah* is misconstrued; only 5 respondents representing 12.5% disagreed. All the respondents i.e. 40, which is 100% agreed to the fact that *Sharī'ah* has generated religious misunderstanding. Therefore, the majority of them, that is, 39 out of the 40 representing 97.5% supported the need for enlightenment on *Sharī'ah* while only 01 respondent representing 01.5% disagreed with it. 35 out of 40 respondents supported the need for dialogue on Shari'ah while 5 respondents disagreed giving us the percentage of 87.5% and 12.5% respectively. From this table therefore, it is observed that majority of the members of the houses agreed to the need for enlightenment and dialogue on *Sharī'ah.*

Table 5.7. Muslims' attitude to *Sharī'ah* – Oyo State

Points raised	Yes	% of Yes	No	% of No	Total
Muslims should forego *Sharī'ah*	04	08.0%	46	92.0%	**50**
Non-Muslims to leave *Sharī'ah* alone	46	92.0%	04	08.0%	**50**
Muslims should ask for it peacefully	50	100%	-	-	**50**
Sharī'ah is the right of Muslims	48	96.0%	02	04.0%	**50**
Non-Muslim should not feel threatened by it	48	96.0%	02	04.0%	**50**
The constitutional provision on it is supported	47	94.0%	03	96.0%	**50**

This table shows the Muslims' attitude to *Sharī'ah* in Oyo State. It gives the analysis of their responses to various issues raised in the questionnaire to feel their pulse about *Sharī'ah*. The question of whether Muslims should forego *Sharī'ah* received the consent of some respondents although very few. The majority disagreed to this, hence out of the 50 Muslim respondents, 46, which is 92.0% disagreed to the point that Muslims should forego it while 4, which represents 08.0% agreed to it. Similar number agreed and disagreed respectively to the point that non-Muslims should leave *Sharī'ah* alone, for it does not affect them adversely. We can see from the table that all the 50 Muslim respondents agreed to the point that Muslims should ask for *Sharī'ah* peacefully giving us the percentage of 100% on this point. Moreso, 48 out of the respondents, which is 96.0%, agreed that *Sharī'ah* is the right of the Muslims to be asked for, while only 2, which is 04.0% disagreed with this fact. Similar number agreed and disagreed respectively to the point that non-Muslims should not feel threatened by its introduction. It is however interesting to note from the table that majority of the Muslim respondents, which is 47 out of 50, representing 94.0%, supported the constitutional provision for the establishment of *Sharī'ah* Courts in the State while only 3 respondents which is 06.0% disagreed to this idea. It is therefore shown from this table that majority of the Muslim respondents in Oyo State supported introduction of *Sharī'ah* in the State.

Table 5.8. Muslims' attitude to *Sharī'ah* – Osun State

Points raised	Yes	% of Yes	No	% of No	Total
Muslims should forego *Sharī'ah*	08	16.0%	42	84.0%	50
Non-Muslims to leave *Sharī'ah* alone	42	84.0%	08	16.0%	50
Muslims should ask for it peacefully	47	94.0%	03	06.0%	50
Sharī'ah is the right of Muslims	45	90.0%	05	10.0%	50
Non-Muslim should not feel threatened by it	43	96.0%	07	14.0%	50
The constitutional Provision on it is supported	46	92.0%	04	08.0%	50

From the above table, we can see that the attitude of Osun State Muslims to *Sharī'ah* is like that of Oyo State, although a few Muslim respondents of Osun State supported the idea that Muslims should forego *Sharī'ah.* Majority however said no; hence we have on the table, 42 out of the 50 respondents saying No, which is 84.0% while only 8 respondents which is 16.0%, said Yes to it. Similar number of respondents agreed and disagreed respectively to the idea that non-Muslims should leave *Sharī'ah* alone because it does not affect them. The idea that Muslims should ask for *Sharī'ah* peacefully had 47 respondents out of 50, representing 94.0%, while those who disagreed were only 3 which is 06.0%. 45 respondents, which is 90.0% agreed to the fact that *Sharī'ah* is the right of the Muslims to be asked for while 5 respondents, which is 10.0% disagreed to it. The table further reveals that 43 respondents, representing 96.0% agreed that non-Muslims should not feel threatened by the introduction of *Sharī'ah* while 7 respondents; representing 14.0% disagreed with it. On a final analysis, 46 of the respondents, representing 92.0% gave their support for the constitutional provision for establishing *Sharī'ah* Courts in the State while 4 respondents disagreed. This, therefore, shows that majority of the Muslim respondents of Osun State pulled their support for *Sharī'ah.*

Table 5.9. Non-Muslims' attitude to *Sharī'ah* – Christians of Oyo State

Points raised	Yes	% of Yes	No	% of No	Total
Muslims should forego *Sharī'ah*	40	80.0%	10	20.0%	**50**
Non-Muslims to leave *Sharī'ah* alone	34	68.0%	16	32.0%	**50**
Muslims should ask for it peacefully	46	92.0%	04	08.0%	**50**
Sharī'ah is the right of Muslims	25	50.0%	25	50.0%	**50**
Non-Muslim should not feel threatened by it	16	32.0%	34	68.0%	**50**
The constitutional provision on it is Supported	38	76.0%	12	24.0%	**50**

The above table shows the attitude of Oyo State Christians to *Sharī'ah.* The idea that Muslims should forego *Sharī'ah* was supported by majority of them; hence 40 Christian respondents, representing 80.0% said "Yes" to it, while 10 of them, which is 20.0% disagreed to it. 34 respondents, representing 68.0% agreed that non-Muslims should leave *Sharī'ah* alone while 16, which is 32.0% disagreed. 46 respondents, representing 92.0%, agreed that Muslims should ask for it in a peaceful manner but 4 respondents, which is 08.0%, disagreed. 25 respondents, representing 50.0% agreed to the fact that *Sharī'ah* is the right of the Muslims while similar number disagreed. The table then shows that 16 out of the 50 respondents which is 32.0% agreed that non-Muslims should not feel threatened by *Sharī'ah* while 34 respondents, which is 68.0% disagreed to it. However, 36 respondents, representing 76.0% supported constitutional provision for establishing *Sharī'ah* Court in the State while 12 respondents which is 24.0% disagreed to it. It is however observed that there seems to be double standard between the earlier position of the majority of the respondents supporting the idea that Muslims should forego *Sharī'ah* and the latest position where majority of them also supported the constitutional provision of establishing *Sharī'ah* Courts. One may therefore say that there is inconsistency in their position. However, the table shows the other responses which could give us the conclusion that majority of the Christian respondents in Oyo State were not in support of *Sharī'ah.*

Table 5.10. Non-Muslims' attitude to *Sharī'ah* – Christians of Osun State

Points raised	Yes	% of Yes	No	% of No	Total
Muslims should forego *Sharī'ah*	35	70.0%	15	30.0%	**50**
Non-Muslims to leave *Sharī'ah* alone	13	26.0%	37	74.0%	**50**
Muslims should ask for it peacefully	35	70.0%	15	30.0%	**50**
Sharī'ah is the right of Muslims	19	38.0%	31	62.0%	**50**
Non-Muslims should not feel threatened by it	15	30.0%	35	70.0%	**50**
The constitutional provision on it is Supported	09	18%	41	82%	**50**

This table shows clearly the attitude of the Christians of Osun State to *Sharī'ah*. 35 of the Christian respondents out of 50 representing 70.0% agreed that Muslims should forego *Sharī'ah* while 15 respondents which is 30.0% disagreed. Moreso, 37 of the respondents, representing 74.0% disagreed to the idea that non-Muslims should leave *Sharī'ah* alone while 13, which is 26.0% agreed to it. 35 respondents, which is 70.0% agreed to the idea that Muslims should ask for it peacefully while 15 respondents, which is 30.0% disagreed. 19 out of 50 Christian respondents, representing 38.0% agreed to the fact that *Sharī'ah* is the right of the Muslims while 31 respondents, representing 62.0% disagreed with it. 15 respondents, which is 30.0% agreed that non-Muslims should not feel threatened about *Sharī'ah* but 35 respondents representing 70.0% disagreed to it. The table finally shows the position of the Osun State Christian respondents to the constitutional provision for *Sharī'ah.* While 9 respondents, which is 18.0% supported the constitutional position allowing establishment of *Sharī'ah* courts, 41 respondents representing 82.0% did not support it. This clearly reveals that majority of the Christians in Osun State were not in support of *Sharī'ah* for the State. Further to this, their responses to other issues in the table clearly show that they are anti- Shari'ah.

Table 5.11. Support for Establishment of *Sharī'ah* Courts in Oyo State

Respondents	Yes	% of Yes	No	% of No	Total
Muslims	47	94.0%	03	06.0%	**50**
Christians	38	76.0%	12	24.0%	**50**
House of Assembly Members	12	60.0%	08	40.0%	**20**
Total	**97**	**80.8%**	**23**	**19.2%**	**120**

From the above table, one can see that the support for the establishment of *Sharī'ah* Courts from the respondents in Oyo State was highly encouraging. From the Muslims end, 47 respondents out of 50, representing 94.0% supported the establishment of *Sharī'ah* Courts in the State while only 3, which is 06.0% did not support it. Even 38 out of 50 Christian respondents representing 76.0% supported the idea while 12, which is 24% disagreed with it. 12, which is 60.0% out of the 20 respondents of the Oyo State House of Assembly members also pulled their support for the establishment of *Sharī'ah* Courts in the State while 10, representing 40.0% did not support it. On the final analysis out of the 120 respondents in Oyo State, 100 which is 80.8% supported the establishment of *Sharī'ah* Courts in the State while 23, representing 19.2% did not support it. From this analysis therefore, it is shown that majority of the Oyo State respondents supported the establishment of *Sharī'ah* Courts in the State.

Table 5.12. Support for establishment of *Sharī'ah* Courts in Osun State

Respondents	Yes	% of Yes	No	% of No	Total
Muslims	46	92.0%	04	08.0%	**50**
Christians	09	18.0%	41	82.0%	**50**
House of Assembly Members	05	25.0%	15	75.0%	**20**
Total	**60**	**50.0%**	**60**	**50.0%**	**120**

This table shows the position of the Osun State respondents to the establishment of *Sharī'ah* Courts in the State. While the Muslim respondents gave their support for the idea, reverse was the case with the respondents from their Christian counterparts and the House of Assembly members. It is shown from the

table that out of the 50 Muslim respondents, 46, representing 92.0% supported establishment of *Sharī'ah* Courts in the State while only 4, which is 08.0% were against it. From the Christian respondents however, 9 out of 50, representing 18.0% were in support while 41, which is 82.0% were not in support. Moreover, out of the 20 respondents of the House of Assembly members, only 5 representing 25.0% supported the establishment of *Sharī'ah* Courts in the State while 15 representing 75% were not in support. On the final analysis, out of the 120 respondents in Osun State, 60 respondents were in support of the idea, representing 50.0% while 60 respondents which are 50.0%, were against it. This shows that the support for and against shared equal total respondents and percentage; hence the support in Osun State for the establishment of *Sharī'ah* Courts was not as encouraging as that of Oyo State.

5.6.6 **Summary of major findings**

Attempt has been made above to give the data analysis and results of our findings. We have been able to discover that many of the citizens of the two States cannot claim ignorance of the application of *Sharī'ah* at one time or the other in the State. It is also shown from our findings that majority of the respondents in the States shared the idea that *Sharī'ah* concerns Muslims only. Moreover, it is discovered that dialogue and enlightenment are essential instruments needed to bring about understanding about *Sharī'ah.* Majority of both Muslim and Christian respondents in the two States supported enlightenment and dialogue on *Sharī'ah.*

More importantly, the findings reveal the attitude of the Muslims and non-Muslims to *Sharī'ah.* While the majority of the Muslims of the two States supported introduction and establishment of *Sharī'ah* in the States, some were not at all in support of such move. It is also discovered that as much as the majority of the Christians of the two States vehemently opposed *Sharī'ah*, there were a number of them who saw nothing wrong with it.

Moreover, it has been shown from the findings that as much as the Muslims of the two States were interested and supported the establishment of *Sharī'ah* Courts of Appeal in the States, their Christian counterparts, particularly those of Osun State were vehemently against it. Moreso, the majority of the respondents

amongst the members of Osun State House of Assembly who are constitutionally responsible for passing a bill to establish *Sharī'ah* Courts into law, were not at all in support of such move. However, the case of Oyo State was a little bit fair.

5.7 Prospects of *Sharī'ah* in the States

Having examined the problems of *Sharī'ah* and having analysed and discussed the findings about *Sharī'ah* in Oyo and Osun States in this Chapter, it is now pertinent to examine its prospect in these States. This is important in order to correlate our findings with what is likely to happen in the two States in the nearest future.

It is observed that although there is no official recognition of *Sharī'ah* in these States at present, the Muslims of the two States are to some extent, conscious of their constitutional right and are gradually gearing up towards asking for it. The positive responses of the Muslims of both States to whether they are in support of establishment of *Sharī'ah* Courts in the States as analysed in our data above really show the level of their preparedness for it. It is our contention that should there be unity of purpose amongst the stakeholders of Islam in the two States; the issue of establishment of *Sharī'ah* Courts of Appeal in the two States will be a thing of the past.

Constitutionally, Muslims, wherever they are in this country have the right to request for freedom to practice *Sharī'ah*. According to Orire,[132] they should see that they are given freedom to practice *Sharī'ah* which is part and parcel of their freedom of worship and at the same time they are granted permission in section 275, sub-section 3 of the 1999 Constitution to establish *Sharī'ah* Court of Appeal stating thus:

> There shall be for any State that requires it a *Sharī'ah* Court of Appeal for that State.

It is the contention of Orire that since the Constitution has made this provision, it becomes the duty of the authority to establish a *Sharī'ah* Court of Appeal once there is a substantial number of its population who are Muslims just

as the authority established Muslim Pilgrims Board for its Muslim population; hence it is mandatory for it to establish a *Sharī'ah* Court of Appeal for its citizens who are Muslims. It is not something that should be left for Muslims to demand.[133] Moreso, the Government of each State of the Federation established Christian Pilgrims Welfare Board for Christians of its State no matter their population. However, as much as we agree with this position, we however observe that where the government or authority fails to do it, the Muslims should mobilize themselves to demand for their constitutional right which we believe they can get if they are united and convinced to the course of getting it.

The prospect of *Sharī'ah* in the two States becomes brighter based on our findings on the attitude of the non-Muslims of the States to *Sharī'ah*. Although there was opposition from some Christians within the two States, we were able to discover from the findings that some Christians are in support of the establishment of *Sharī'ah* Courts in the States. This shows that should there be dialogue among religious groups on *Sharī'ah* and should the Christians be properly educated on the fact that *Sharī'ah* concerns Muslims only, their opposition to it will be withdrawn and they will support its establishment. Moreso, the majority of the Christian respondents in the States to our questionnaire supported enlightenment programme on *Sharī'ah* as recorded in table five of the data analysis.

The need to educate the non-Muslims particularly the Christians on what *Sharī'ah* is all about becomes necessary because their opposition to *Sharī'ah* was based on their ignorance about the benefits of it. It was as a result of the opportunity a Christian judge had to be educated about *Sharī'ah,* which gave him a change of heart about it. Noibi was reported to have educated this Christian judge and based on his conviction about it he remarked thus:

> Ah, how ignorant, we human beings are? I have been on the bench for 15 years and I have been a lawyer for almost 25 years and used to think that I know everything about law; but here is a law applicable in my country and I am ignorant about this. If this is *Sharī'ah*, why are people criticizing it? If I had my way I would ensure that all lawyers who graduate in this country should study *Sharī'ah*.[134]

The establishment of Independent *Sharī'ah* Arbitration Panel in Ibadan has not only created awareness about *Sharī'ah* in the State but has also sensitized many Muslims on the values and benefits of *Sharī'ah*. A number of matrimonial cases handled by the panel solved the problem of many families that would have broken. Rather than dissolving marriages, the panel explored all avenues provided by the *Sharī'ah* to bring amicable settlement amongst couples that appeared before it. Many homes had therefore regained matrimonial peace and tranquility. As a result of this, many Muslims in Ibadan having matrimonial disputes or problems now prefer taking their cases to the *Sharī'ah* panel than to Customary Courts where their problems will be compounded. Therefore, there is no week that one case or another will not be brought before the panel.[135]

In Osun State, similar Independent *Sharī'ah* Arbitration Panel had been constituted by Osun State Muslim Community under the leadership of Shaykh Salahud-din Olayiwola. It was constituted at its monthly meeting held on 19th of September, 2004. The intention was to create an avenue where Muslims in the State will have the opportunity of getting their issues and problems handled according to *Sharī'ah* on private or independent basis as the case is in Oyo State. The panel consists of 9 Members: Seven Islamic Scholars and two Muslim Lawyers. They are Alhaji Sulaiman Salahud-din, Alahji Abdur-Rahaman Olaniyan; Alhaji Musa Raji; Alhaji Muhibudeen Muhammad Jamiu; Alhaji Yunus Balogun; Alhaji Abdul-Fatah Makinde (the author of this thesis); Alhaji Zakariyau Sanusi; Barrister Abdus-Salam Abbas and Barrister Lawal Abdul-Ghaniy. The panel was charged to swing into action with immediate effect. Several meetings were held by the panelists to design modalities to be used. They resolved to begin from mobilizing and sensitizing the Muslims of the State about the emergence of *Sharī'ah* panel in the State.[136]

The implementation of *Sharī'ah* on private level as discussed above will go a long way in promoting the course of *Sharī'ah* in these States. It will help the Muslims of the States to identify with the application of *Shari'ah* on their various issues, which may on the long run help in actualizing the official introduction of *Sharī'ah* in the States or help to bring about the actualization of the demands of the Muslims to have *Sharī'ah* Courts of Appeal.

More importantly too, our finding shows that majority of members of Oyo State House of Assembly who responded to our questionnaire were favourably disposed to the establishment of *Sharī'ah* Courts in the State. 15 out of the 25 respondents supported this idea. Although, majority of the members of Osun State House of Assembly who responded to the questionnaire were not in support of the idea, yet, some of them were favourably disposed to it; hence we recorded 15 against it while 5 were in support. However, with time, and with educative and enlightenment programmes on *Sharī'ah*, the situation is likely to change for better. It is our belief that when necessary machinery is put in place in both States for the establishment of *Sharī'ah* Courts, the dream will at the end become a reality.

NOTES AND REFERENCES TO CHAPTER FIVE

1. Akintola, I. 2001. *Sharī'ah in Nigeria: an eschatological desideratum*. Ijebu-Ode: Shebiotimo Publication. pp.124 -125.
2. Doi, A.R.I. 1987. *Sharī'ah*: A mis-understood and maligned system of law. S.K. Rasid. Ed. *Sharī'ah social change and indiscipline in Nigeria*. Sokoto: The University of Sokoto Press. p.43.
3. *Ibid.* p.45.
4. *Ibid.* p.45.
5. *Ibid*. p.51.
6. *Ibid.* p.50.
7. *Ibid.* p.51.
8. Akintola, *Op.cit.* p.14.
9. Akram, M. *Sharī'ah* and armed robbery in Nigeria. S.K. Rashid. Ed. *Op.cit*, 212.
10. *Ibid.*
11. Umar, A.I. *Sharī'ah* as a means to solve modern problem. *Ibid*. p.219.
12. Amoloye, J.A., *Sharī'ah* and Nigeria's Problem of Indiscipline: Certain Aspects. *Ibid.* p.200.
13. *Ibid.* p.201.
14. Akintola, *Op.cit*. pp.124 -125.
15. *Ibid.* p.218.
16. *Ibid.* pp.215 – 216.
17. *The Guardian*, Monday 15th of November, 1999. p.4.
18. *Ibid.* p.4.
19. Adeeb, S., 2003. Islamic Nigerian Court sentences woman to death by stoning, save Nigerian Islamic women from barbarity. Retrieved June 10, 2003 from (http://www.geociticies.com/4RF info), pp.1 & 2

20. *Ibid.* pp.1 & 2

21. Odeh, N. A. 2002, *Sharī'ah* Court sentences a woman to death by stoning. *The News*. Sept. 2. 19: 9. pp. 1 & 2.

22. Adeeb, S. *Op.cit.*p.1.

23. *Ibid.* p.1.

24. *Ibid.* p.1.

25. *Ibid.* p.1.

26. *Ibid.* pp.3 & 4.

27. Muslim Women's League. 2003. The Draft of a letter sent to the Governor of Zamfara, Niger about the Adultery Case. Retrieved June 10 2003 from File: /^/KKDLAP\C\Shari'ah\The%20 Draft

28. *Ibid.* p.2.

29. Akintola, *Op.cit.* p.200.

30. Qur'an 4 verse 7.

31. *Ibid,* 4 verse. 4.

32. *Ibid,* 16 verses 58 – 59 and 81 verses 8 – 9.

33. *Ibid,* 4 verse 19.

34. *Ibid,* 24 verse 31 enjoins women not to display their beauty and ornaments.

35. Akintola, *Op.cit.* p.202.

36. An interview granted to Dr. (Mrs.) Karima Ahmed Sanni, the Wife of Zamfara State Governor in the *Nigerian Tribune* of Tuesday 25 January, 2000, Eve 17.

37. Doi, 1984. *Sharī'ah: The Islamic Law.* London: Ta Ha Publishers. Pp.299 – 300.

38. Akintola, *Op.cit*.p.203,

39. *Ibid.* p.200.

40. Akintola, *Op.cit*. pp.199 – 200.

41. *Ibid.* p.199.

42. Doi, 1987.*Op.cit*. p.44.

43. Akintola, *Op.cit.* p.190.

44. *Ibid.*

45. Al-Kanawi, S.H. 2003. *Sharī'ah* and the press in Nigeria (Book Review). Retrieved June 10, 2003 from KKDLAP *Sharī'ah* in Nigeria htm. p. 3.

46. *Ibid.*

47. *Ibid.*

48. *TELL*, No 46, 15th of November, 1999, Front Page.

49. *Ibid*, p.11.

50. *Ibid.* p.11.

51. *The Punch*, Wednesday 17, 1999, p.4.

52. Akintola, *Op.cit.* pp.180 -181.

53. *Ibid*. p.181.

54. Nwosu, S. 2000. Fears over *Sharī'ah* exaggerated. *This Day*. July 25. pp. 1 – 2.

55. *The Punch*, "*Sharī'ah*: no cause for alarm, Obasanjo insists," Thursday, September 14, 2000, pp 1 - 2.

56. Akintola, *Op.cit.* 189.

57. *Ibid.* pp.184 – 185.

58. Neilson, W.A. Ed. 1934. *Wester's new international dictionary*. 2nd ed. U.S.A: G & C. Merriam Company.

59. The University of Chicago. 1959. *Encyclopaedia britannica*. Chicago: Encyclopaedia Britannica. p.262.

60. *Ibid.* p.262.

61. Nelson, *Op.cit.*

62. The University of Chicago, *Op.cit.* p.263.

63. Shambo, B. 1999. Security versus multi-religion. A paper presented at national symposium on religious mutual respect and peaceful co-existence organised by the National Council for Genuine Democratic Development on 28th and 29th January at Abuja, p.2.

64. *Ibid.* 3.

65. *Ibid.*

66. Yadudu, A.H. 2000. Legal pluralism in a multi-religious society: a Nigerian case study. A paper presented at the national seminar on *Sharī'ah* in Kaduna on 10th February. p.2.

67. Yaro, Y.I. 1999. Nigeria as a multi-religious state: meaning and implication. A paper presented at the 4th International Conference on Christian - Muslim Mutual Relations held at the study centre, Muryam Bishawa, Plateau State between 23rd and 28th August. p.2.

68. Yadudu, *Op.cit.*p.3.

69. *Ibid.* 6.

70. Doi, *Op.cit.* p.39.

71. *Ibid*, 43.

72. *Ibid.* p.46.

73. *Ibid.* pp.47 – 48.

74. *Ibid.* pp.47 – 48.

75. Sulaiman, I. 1986. Victor takes all: the *Sharī'ah* in secular Nigeria. S.K. Rashid Ed. *Op.cit.* p.58.

76. *Ibid.* p.58.

77. *Ibid*. pp.58 – 59.

78. Amoloye, J.A. 1986. *Sharī'ah* and Nigeria's problem of indiscipline: certain aspects. S.K. Rashid. Ed. *Op.cit.* p.202.

79. Akintola, *Op.cit.* p.15.

80. *Ibid.* p.15.

81. Asajere, A. 2000. *Sharī'ah* is Constitutional, says Kusamotu. in *The Guardian* April 5. pp 8 – 9.

82. Akintola, *Op.cit.* p170.

83. Abubakre, R.D. 1985.The *Sharī'ah* and non-Muslims in Nigeria: Its implications for national unity. A lecture delivered at Religious studies conference held at the University of Ibadan, Ibadan on 27th March. pp.1 – 2.

84. *Ibid.* p.2.

85. Doi, 1987. *Op.cit.* p.40.

86. Sulaiman, *Op.cit.* p.56.

87. Abd. Al-Masin, K.O. & Ibn Salam, M.J. 2000. *What you have not heard about the Sharī'ah question.* n.t: JPC Inc. p.6.

88. *Ibid.*p.62.

89. *Ibid.*p. 7.

90. Dodo, D.D. 2000. Understanding Christians and Muslims over the adoption of the full scope of the Islamic *Sharī'ah* Law in Nigeria. A paper presented at the first national seminar of the Nigeria Inter-Religious Council held at Abuja between 21st and 22nd June. p.29.

91. *Ibid*. p.26.

92. Onaiyekan, J. 2000. The *Sharī'ah* in Nigeria: issues and perspectives. A paper presented at the national seminar on *Sharī'ah* at Kaduna on 12th February. p.2.

93. Dodo, *Op.cit.* p.37.

94. *Ibid.* p.43.

95. Onaiyekan, *Op.cit.* p.14.

96. Oral Interview with Bishop Gabriel Leke Abegun (53years), Chairman, Osun State Branch of Christian Association of Nigeria (CAN), on 11th September, 2003.

97. *Ibid.* 11-09-03

98. *Ibid.* 11-09-03

99. Oral interview with Venerable Olatinwo Fatoki of Ibadan North Anglican Diocese, (53 years) on 19th May, 2004.

100. *Ibid.*

101. Seriki, I.A.A. 1981. *Sharī'ah* provision in the 1963 and 1979 Constitutions of Nigeria: a comparative study. M.A. Project. Dept. of Arabic and Islamic Studies. University of Ibadan. p.35.

102. *Ibid.* p.36.

103. *Ibid.* p.36.

104. Adegbite, L.A. 2000. The constitutional and legal status of *Sharī'ah* in Nigeria. A paper presented at a seminar on *Sharī'ah* organised by Nigeria Inter-Religious Council (NIREC) on June 21 – 22, at Abuja. p.2.

105. *Ibid.*

106. *Ibid*. p.3.

107. Orire, A.K. 2000. Prospect of establishing *Sharī'ah* Courts in Southern Nigeria. A paper presented at a symposium organised by NACOMYO Osun State Chapter on 30th January, at Osogbo. pp 4 – 5.

108. *Ibid.*p.7.

109. Dodo, *Op.cit.* p.43.

110. Interview conducted with Bishop Gabriel Leke Abegunrin, *Op.cit*.

111. Akintola, *Op.cit.* p.131.

112. Orire, *Op.cit*. p.5.

113. *Ibid. p.*5.

114. *Ibid.*

115. *Ibid.* p.6.

116. *Ibid*. p.8.

117. The Bill is under appendixes.

118. Interview with Asimiyu Niran Alarape, the former Hon. Speaker of Oyo State House of Assembly, (42 years) on 17th July, 2002.

119. *Ibid.*

120. The memo is under appendixes.

121. Interview with Dr. Majeed Olujinmi Alabi (42years), the former Hon. Speaker of Osun State House of Assembly, a man of on 5th May, 2002.

122. *Ibid.* 05-05-02

123. *Ibid.* 05-05-02

124. *Ibid.* 05-05-02

125. Obiyemi, W. 1995 Writing Research Project. S.A. Jimoh. Ed. *Research methodology in education: aniInter-disciplinary approach.* Ilorin: University of Ilorin, Library and Publication Committee. Pp.196 – 197.

126. *Ibid.* p.197.

127. Fajemidagba, M.O. 1995. Research designs and their statistical implications. *Ibid*. p.47.

128. Abdullah, E.O. 1995. Typology of Research. *Ibid*. p.15.

129. Daramola, S.O. 1995. Sample and Sampling Techniques. *Ibid*. pp.116.

130. *Ibid.* pp.117 – 118.

131. *Ibid.*p.119.

132. Orire, *Op.cit*. p.6.

133. *Ibid.* p.6.

134. Haque, M. 2001. An interview with Prof. Dawud Noibi on implementation of *Sharī'ah* in Nigeria. *WML Journal*. pp. 29 – 33.

135. Interview with Bro. Oyeniran Saheed, the court clerk of the Independent *Sharī'ah* Panel in Ibadan, (28 years) on 20th May, 2004.

136. Interview with Alh. Rasheed Ayo Olabomi, the General Secretary of Osun State Muslim Community (45 years), on 26th September, 2004.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATIONS

6.1.0 Conclusion

This chapter serves as the concluding aspect of the study. It gives a brief summary of the issues discussed in the preceding chapters on *Sharī'ah* and its application in Yorubaland, on a general note, and in Oyo and Osun States on a specific note before making necessary recommendations. The chapter is therefore divided into two sections; summary and recommendations for elucidation and clarification purposes. The sections are then discussed here under:

6.1 Summary

Under this section, attempt is made to look at two main sub-sections with a view to bringing our discussion into summary for proper understanding.

These two sub-sections are:

(i) *Sharī'ah* application in Yorubaland;

(ii) *Sharī'ah* application in Oyo and Osun States.

6.1.1 *Sharī'ah* application in Yorubaland

The area known as Nigeria has for long got the wind of Islam. The spread of Islam to various parts of West Africa through the activities of Muslim merchants and clerics did not leave Nigeria untouched. Islam had spread to Kanem-Borno Empire since the 10th Century, to Hausaland since the 13th century, and to Yorubaland since the 16th century.[1] *Sharī'ah* which has always been part and percel of Islam, has always moved with Islam to any part of the world.

The advent of Islam in Yorubaland automatically brought about the practice of *Sharī'ah* in the area. As Islam gained ground in Yorubaland, the general pattern of life there was also made in conformity with the *Sharī'ah*. The Yoruba Muslims practised *Sharī'ah* at least in the various mosques particularly on matters relating to marriage, child-naming, funerals and inheritance. However, the Jihad of 'Uthman b.Fudi (1754-1817) served as boost to the spread of Islam and *Sharī'ah*

practice in Yorubaland. The learned Mallams who came to teach Islam after the Jihad period from Katsina, Kano, Sokoto, Bornu and Ilorin in Yorubaland were conversant with Shaykh Uthman's practice of *Sharī'ah* and encouraged same to the Yoruba Muslims.[2]

Evidence abound to show that Yorubaland had witnessed the practice of Islam and *Sharī'ah* long before the advent of the British or Christian colonialists in the area. It is evident that in some parts of pre-colonial Yorubaland justice was dispensed according to *Sharī'ah* and it was applied fully in some prominent towns like Iwo, Ikirun, Ede and Epe. There are also some expressions which are *Sharī'ah* oriented and are freely used among the Yoruba up till today. Moreso, there are some compounds in the principal towns where *Sharī'ah* was practiced which are called *Alkali* families or compounds till today. This was said to be as a result of the *Sharī'ah* court judges who came from such compounds or families.

During the colonial periods, the British rulers adopted different strategies to rule Nigeria. In the northern part of the country, they applied indirect rule, because the Sokoto Caliphate had established *Sharī'ah* more than hundred years before their arrival; whereas in the Southern part, it was direct rule they adopted. It was as a result of this that they retained *Sharī'ah* in the Northern part but did not allow it in the Southern part.[3] The British colonialists therefore employed direct rule to contrive *Sharī'ah* practice in Yorubaland.

The contrivance of *Sharī'ah* by the British colonialist gave a set back to *Sharī'ah* practice in Yorubaland. This notwithstanding, some groups of Muslims were bold enough to demand for the establishment of *Sharī'ah* Courts from the British Colonial Government. Lagos Muslims forwarded a petition in 1894 to the British Government demanding for the establishment of *Sharī'ah* Courts in Lagos colony. They repeated it in 1923 while Ibadan Muslim Community made its request to the British Government in 1938. The Muslim congress of Nigeria with its secretariat in Ijebu-Ode also petitioned the Governor of Nigeria demanding for *Sharī'ah* Courts in 1948.

Although the British colonialists did not listen to the pleas of the Muslims, they did not relent in their demands up to the time of independence. There were also post-independence demands for *Sharī'ah* Courts by various Islamic groups in

Yorubaland. The demands became strident towards the end of 1970s when *Sharī'ah* became a big issue in Nigeria. This was as a result of the fact that the country was moving to prepare a constitution for the whole country and the Muslims demanded provision for *Sharī'ah* in the Constitution which was vehemently opposed by the Christians.[5] The memoranda on provision of *Sharī'ah* in the constitution which went from Yorubaland focused the need not to restrict *Sharī'ah* Courts to the Northern States but allow their establishment in the Southern States too.

There is no doubt that the demands of the Muslims in Yorubaland for *Sharī'ah* Courts during and after the colonial periods had not been acceded to. This, however, is not to say that *Sharī'ah* was/is not practiced. The commitment of some Muslims in Yorubaland to the practice of Islam had urged them to apply *Sharī'ah* at private level. While some Muslims limited their application of *Sharī'ah* to matters of marriage, child-naming, funerals and inheritance some went beyond that to matters of divorce and settlement of disputes. They organised *Sharī'ah* Courts among the membership of their groups and dispensed justice according to *Sharī'ah* in their courts. Such groups include Islahud-din Missionary Association based in Iwo, Zumuratul-Mu'minin Society popularly known as Bamidele Group in Ibadan, Faya in Ikirun, Ambe in Offa and Dandawi in Ekiti.[6]

The desire of Muslims in Yorubaland for *Sharī'ah* Courts is borne out of the fact that the life of a Muslim is incomplete without *Sharī'ah*. Muslims are expected to surrender their will to that of Allah. It is this submission which is called 'Islam' and those who do so i.e those who out of their own free will accept Allah as their Sovereign and surrender to His Divine will and undertake to regulate their lives in accordance with His command are called 'Muslims'. Besides, their submission must be total according to Qur'an 2 verse 208 which says:

يايها الذ ين أمنوا اد خلوا فى السلم كافة
ولا تتبعوا خطوات الشيطان انه لكمعدو مبين

> O ye who believe! Enter into Islam whole-heartedly; and follow not the footsteps of the Evil one; for he is to you an avowed enemy.

All those persons who totally surrender themselves to the will of Allah are welded into a community called Muslim Ummah (community). The members of this community i.e. Muslims undertake to recognize Allah as their Sovereign, His guidance as supreme and His injuctions as absolute law. In other words, it is Allah and not man whose will is the source of law in a Muslim community; hence what is prescribed for such a community as a code of life is *Sharī'ah* and it is bound to conform to it. It is, therefore, inconceivable that any Muslim Ummah worthy of the name can deliberately adopt a system of life other than the *Sharī'ah*.[7] More importantly too, the Qur'an has charged the Muslims not to put their own wisdom above Allah's wisdom. Allah's decree must be accepted loyally and carried out without query. Qur'an 33 verse 36 states:

وما كان لمومن ولامومنة إذا قضى الله ورسوله امرا ان يكون لهم الخيرة من امرهم ومن يعص الله ورسوله فقد ضل ضلالا مبينا

> It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Apostle, to have any option about their decision: If any one disobeys Allah and His Apostle, he is indeed on a clearly wrong path.

The failure of the governments in Yorubaland to give official recognition to *Sharī'ah* despite the continued demands could be based on a number of problems associated with the Muslims themselves and the enemies of Islam and *Sharī'ah*. In the first place, the Muslims themselves were not united in their demands for *Sharī'ah*. While some Muslims championed the course of establishing *Sharī'ah* Courts in Yorubaland, some did not see reason for it and as a result kicked against the move. This may be due to their ignorance about *Sharī'ah* or as a result of their selfish interests. Such people, according to Quadri, are not better than *Kufār* (infidels) even though they pray five times daily, fast in Ramadan and perform *Hajj* on many occasions.[8] Therefore; the failure of the Muslims in Yorubaland to speak with one voice on their demand for *Sharī'ah* in the area has continued to bring set-back.

Apart from the intra antagonism from the Muslims end, there is that of the external one from the non-Muslims, particularly the Christians. They have

incessantly displayed religious intolerance on the issue of *Sharī'ah* – dispite the assertion that *Sharī'ah* concerns Muslims alone. They have gone all out in their write-ups, public lecture, symposia, seminars and discussion to condemn *Sharī'ah* and antagonize the establishment of *Sharī'ah* Courts in Yorubaland by the government. For example, a Christian cleric based in Abuja, John Onaiyekan criticized the establishment of *Sharī'ah* Courts by the government. He states that:

> From point of view therefore of the issues under discussion, the major question is not whether Muslims should be guided by the *Sharī'ah,* they certainly must be. Nor is it whether Christian should be guided by their religious norms, they have the duty to do so. The question rather is whether these religious norms must be implemented and enforced by legal instruments of government, precisely as religious Law.[9]

Sharī'ah in Yorubaland also faces a serious problem from the Press. There have been series of uncomplimentary reports about *Sharī'ah* particularly in the print-media of the Southern part of Nigeria, especially, Yorubaland. *Sharī'ah* was given all sorts of names with a view to discouraging readers from appreciating its beauty and benefits. The most virulent attackers of *Sharī'ah* in the press were Yoruba Christian journalists who were carrying out the agenda of their patrons.[10] Therefore many newspapers in Yorubaland were seen as enemies of *Sharī'ah* based on their reports and editorials. Similar antagonistic postures to *Sharī'ah* were also displayed in the news and reports of many electronic media in Yorubaland.

The most unfortunate thing however is that *Sharī'ah* is not given any place in the judicial system of Yorubaland as done to the Common Law and Customary Law. While *Sharī'ah* is treated under Customary Law in the Northern part of the country, it is not given recognition at all in Yorubaland. The Customary Law in the area is limited to Yoruba customs and traditions despite the fact that there are many Muslims in Yorubaland. Therefore, marriages conducted under strict *Sharī'ah* injunctions are dissolved according to Yoruba Customary Law when dissolution becomes necessary among Muslim couples and there are no *Sharī'ah* Courts where it could be carried out except in the Customary Courts that are available.

In view of the above, the present place of *Sharī'ah* in Yorubaland calls for a review. Although *Sharī'ah* is practiced at individual, communal and group levels, it deserves to be given an official status and recognition. This becomes necessary in order to accord the Muslims in Yorubaland their constitutional right. *Sharī'ah* is part and parcel, as well as the core and kernel of their religion and any attempt to deny them the right to officially practise it makes their religion incomplete and implies denying them their constitutional right. It is on this note that Muslims in Yorubaland continue to demand for this right of being officially allowed to practise *Shari'ah*. The way to achieve this is discussed under recommendations.

6.1.2 *Sharī'ah* application in Oyo and Osun States

By the structural nature of Nigeria, Yorubaland occupies the whole of the present South-West geo-political zone of the country while Oyo and Osun States are component units of the zone. Oyo and Osun States are among the thirty six states in the Federation. While Oyo State was created out of the defunct Western States in 1979,[11] Osun State was carved out of the old Oyo State in 1991.[12] This is to say that the two states are Yoruba states which shared common socio-cultural and religious peculiarities.

Oyo and Osun States are dominated by the Muslims and the the practice of Islam is very common. The application of *Sharī'ah* in these two states is also something that cannot be disregarded. It has become part of the practices of Muslims in the two states.

The advent of Islam and *Sharī'ah* in the two states dates back to the spread of Islam in Yorubaland. It is therefore not to be assumed that Islam and *Sharī'ah* emerged in Oyo and Osun States when they were created in 1976 and 1991 respectively. Islam and *Sharī'ah* have been in existence in the two areas known as Oyo and Osun States long before their creation as states. It has been well established that a discussion of the *Sharī'ah* in any part of the Muslim world must begin with the introduction of Islam into the area as a faith and as a way of life.[13]

The applcation of *Sharī'ah* in Oyo and Osun States was not limited to the religious sphere; it included the area of law on issues like marriage, divorce and inheritance. Although the practice of *Sharī'ah* has not been given official

recognition by the governments of the two States, the Muslim communities of the States practise it in a purely individual and private capacities.[14]

There were agitations and demands for *Sharī'ah* from the government of the two states at one time or the other. As early as 1976, agitation for *Sharī'ah* in the old Oyo State had started. It was spearheaded by National Joint Muslim Organisation of Nigeria (NAJOMO).[15] In 1978, during the deliberation on the 1979 constitution, many Muslim bodies and individuals in Oyo State wrote to the Constitution Drafting Committee demanding for the inclusion of *Sharī'ah* in the Constitution and allowing Muslims in various parts of the country to establish *Sharī'ah* Courts.[16] There was also a public call in 1984 by the Oyo State League of Imam and Alfas in conjunction with their counterparts in other states for the establishment of *Sharī'ah* Courts in Yorubaland.[17]

As the agitation and demand for establishment of *Sharī'ah* Courts continued in Oyo State unbated, its Osun State Counterpart at its creation in 1991 also joined in the struggle. The agitation and demand for establishment of *Sharī'ah* Courts in Osun State became necessary going by the fact that the State harbours some principal Yoruba towns where *Sharī'ah* was firmly established and practised before the arrival of the British colonialists. These towns are Ede, Ikirun and Iwo. It was the British colonialists that abolished *Sharī'ah* in the towns and agitation to have it back had continued since then.

Efforts of the Muslims in both Oyo and Osun States to press for the official implementation of *Sharī'ah* Courts in the two states took various dimensions. It involved different Islamic groups or associations organising lectures, symposia and rallies to publicly demand for the establishment of *Sharī'ah* Courts. [18] Apart from that, the Muslims of the two states had at one time or the other reached their Houses of Assembly to demand for the establishment of *Sharī'ah* Courts. In Oyo State, a Muslim group sent a private Bill on *Sharī'ah*[19] to the Oyo State House of Assembly for the establishment of *Sharī'ah* Courts in the state during Governor Lam Adesina's regime but the Bill was ignored. Similarly, the Leagues of Imams and Alfas of Osun State under the Leadership of their Chairman, the Chief Imam of Osogboland Alhaji Mustafa Ajisafe sent a memo[20] to Osun State House of Assembly during Governor Bisi Akande's regime demanding for establishment of *Sharī'ah* in the state but nothing was done on it.

That no official recognition is given to *Sharī'ah* by the governments of both Oyo and Osun States, does not mean that *Sharī'ah* is not applied in the States. It is applied at individual and private capacities by Islamic groups and societies as well as Muslim communities. In Oyo State for example, an Islamic group known as *Zumratul-Mū minī n* popularly called 'Ijo Bamidele' or 'Bamidele Movement' in Ibadan applies *Sharī'ah* amongst its members and metes out *Sharī'ah* punishments to its members who are found guilty of certain aspects of the *Sharī'ah* Law. Although, the practice of *Sharī'ah* by this group cannot be said to be total, it however applies it to some extent.

Both Hausa and Nupe communities also applied *Sharī'ah* in Ibadan. They do this with a view to ensuring that certain matters are handled in accordance with the laid down principles of the *Sharī'ah* and this is done on a private basis without the involvement of the government. The *Sharī'ah* is also applied in Ibadan under Independent *Sharī'ah* Arbitration Panel at the Oja-Oba Central Mosque every Thursday of the week. This was initiated by some Muslims after all efforts to persuade the Oyo State House of Asembly to consider the private Bill for the establishment of *Sharī'ah* Courts in the State failed. It is a non-governmental *Sharī'ah* Court Panel, which was launched on 1st of May, 2002 with some Islamic Scholars as judges to handle civil matters concerning inheritance, marital cases, disputes and divorce. Since the time of the inauguration of the panel up to 20th of May 2004, 1 criminal case on *Zin*ā, 6 debt cases, 6 cases of inheritance and 47 marital cases had been adjudicated upon.[21]

The situation in Osun State is similar to that of Oyo State. There are two Islamic groups in Osun State that are known for the application of *Sharī'ah* among their membership. The Islahudeen Missionary Association of Iwo is known for the practice of *Sharī'ah* on certain matters like *Tal*ā*q* - divorce, *Mī rāth* – Inheritance and even *Zin*ā – adultery a times. They have their own *Sharī'ah* Court which is handled by a *Sharī'ah* panel comprising of some Islamic Scholars and the Court sits on Wednesdays and Fridays after *Jumat* Service in the Arabic School premises of the Association. The other group is the *Faaya* group in Ikirun, which also applies *Sharī'ah* amongst its members. This group is considered to be a brand of the *Zumratul-Mū minī n* or Bamidele Movement of Ibadan. It therefore takes the pattern of applying *Sharī'ah* from its headquarters and follows similar process.

The issue of Independent *Sharī'ah* Implementation has not taken a proper shape in Osun State as it has in Oyo State. Although an Indepentent *Sharī'ah* Panel comprising eight members have been set up by Osun State Muslim Community to handle issues or matters in accordance with the *Sharī'ah* on non-governmental basis as done in Oyo State, no meaningful job could be reported to have been done. What could be said is that, as the panel took off, Muslims in the State were urged to take their cases, particularly those on marital disputes to the panel for adjudication. From the foregoing, it is evident that the application of *Sharī'ah* in Oyo and Osun States is never a mirage; it is something that takes place amongst the Muslims of the two states. Presure is being put on the respective governments to give official recognition by establishing *Sharī'ah* Courts in the States. With time however, this dream, it is assumed, will become a reality.

6.2.0 **Recommendations**

The following recommendations may help governments of the two states on one hand and the Muslims on the other hand in solving the problem of establishing *Sharī'ah* Courts in the two states in particular and Yorubaland at large.

6.2.1 ***Sharī'ah* Education**

It may be noted that ignorance is a serious disease; and whenever one is not well informed about the benefits that are derivable from something, one may kick against such a thing until one becomes properly informed about it. We have observed that *Sharī'ah* matter requires a lot of education and enlightenment of people; Muslims, non-Muslims and the government for them to understand the benefits that *Sharī'ah* can give to human society. It is to be understood that the *Sharī'ah* is divine in its origin, humane in its subject matter and application, ideal in the principles, scientific in its methods, democratic in its spirit, comprehensive in its scope and dynamic in its nature.[22] It is suggested that the more people become more educated about *Sharī'ah*, whether Muslim or non-Muslim, the less antagonistic posture they display. It is on this note that we recommend following:

i. Intensive education and enlightenment on *Sharī'ah* should be embarked upon with a view to showing the beauty and benefits of *Sharī'ah* to Muslims and non-Muslims alike;

ii. The Muslim *Ulamā* and preachers who constitute the Alfas and Imams that antagonize *Sharī'ah* for selfish purposes should be properly oriented.

iii. Awareness campaign should be mounted so that non-Muslims would properly understand *Sharī'ah*, particularly on the fact that *Sharī'ah* concerns Muslims only.

iv. Pressure should be put on the government so that it would be alive to its responsibility of doing justice to all religious groups without fear or favour. When the beauty of *Sharī'ah* is well displayed to the government at all levels, there is the likelihood of allowing the system to operate in our society.

v. The press should be advised to eschew yellow journalism and be objective in reporting religious matters. It is a well established fact that the stance of the Nigerian Press in the issue of *Sharī'ah* is rather uncomplimentary. The Press which is expected to serve as a means of educating and enlightening the people actually need a lot of education and enlightenment on the *Sharī'ah*.

vi. Modern strategy and technology should be employed for dissemination of the *Sharī'ah*.

6.2.2 **Societal problems and *Sharī'ah* Solutions**

It is observed that Nigerian society is one which is full of social vices and crimes of different nature. All efforts made to redress this problem proved abortive. Crimes are the worst manifestation of indiscipline in both the individual and society. A disciplined society pre-supposes security and protection of all values that it cherishes: peace and orderliness.[25] Nigerian society cannot be described to be a disciplined one because of many vices and crimes that abound there. The Western secular approach to crime which is used through the English or Common Law has not brought any meaningful success rather, the whole system becomes

more complicated and criminal oriented. Amoloye opines that 'perhaps what lies at the root of indiscipline in our society is our hesitation to be guided by divine command and guidance'.[26]

However, with the rising rate of crime in Nigerian Society, there is the need to take a control measure. If the secular Western approach fails, another approach needs to be applied. Here in lies the relevance of *Sharī'ah*. It presents a remedy of proven efficiency, it defines clearly the standard and values to be pursued and it puts forward a realistic and comprehensive programme.[27] It is as a result of this that *Sharī'ah* is recommended as an alternative system to combat crime in our society.

As Tabi'u observes, obvious reasons make it necessary to recommend *Sharī'ah* as an effective means of reforming society, creating a disciplined people and combating the rising tide of crimes in the country. The first reason is that the secular Western means so far used in preference to the *Sharī'ah* has undoubtedly failed. Secondly, there is an urgent need for an efficacious remedy so as to avert the growing menace to the survival of society passed by insecurity, failure and frustration. Thirdly, the *Sharī'ah* has provided in the past the security, peace and discipline which are eluding the Nigerians today. Fourthly, in the whole of this world, nowhere has the war against crimes been as successfully waged as in those countries where *Sharī'ah* is in force. It is for instance a well-known fact that Saudi Arabia, where the *Sharī'ah* is substantially enforced, is one of the countries with the lowest crime rates in the world.[28]

6.2.3. ***Sharī'ah* and Nigerian constitution**

Nigerian constitution has been observed as one of the major obstacles for *Sharī'ah* particularly in the Southern part of the country where Yorubaland falls. This obstacle is the clause in the constitution about the establishment of *Sharī'ah* Courts which has made it difficult for the Muslims in Yorubaland to achieve their objective on *Sharī'ah*. The *Sharī'ah* provision in the constitution does not make it automatic for any state to establish *Sharī'ah* Court unless it is requested for and that request will take certain constitutional or legislative procedures which make the request cumbersome and uneasy to achieve. There are some other constitutional

issues which need to be addressed on *Sharī'ah.* It is as result of this that the following recommendations are made:

i. The freedom of religion entrenched in the constitution should be extended to the establishment of *Sharī'ah* Courts for the Muslims in all parts of the country. If not, Abdul-Salam observes that "the much acclaimed freedom of religion entrenched in the constitution of the Federal Republic of Nigeria will continue to be meaningless to the Muslims in Nigeria, especially the Yoruba Muslims, until they are given the right to be governed by the provision of *Sharī'ah*".

ii. In addition, the constitutional provision for the establishment of *Sharī'ah* Courts for states makes it difficult to be achieved. The difficulty was caused by the clause of section 275(1) of 1999 constitution which contains the phrase 'any state that requires it'. In view of the necessity of *Sharī'ah* Courts in Yorubaland and the South in general, we recommend that this section of the constitution be reviewed to make the establishment mandatory on every State of the Federation.

iii. Nigerian Constitution should for the overall interest and promotion of peace and religious tolerance operate real legal pluralism. This is the only means through which the three legal systems vis: English, *Sharī'ah* and Customary will be allowed to function independently and effectively. *Sharī'ah* Courts and Customary Courts should be encouraged to complement the efforts of the English Courts. A situation whereby cases are lying without being attended to for longer time in English Courts will become a thing of the past.

iv. Moreso, for the purpose of religious justice, and fairplay and for religious freedom to be actually displayed, Muslims, Christians and traditionalists

should be given constitutional right to apply the legal system that suits their faith. Therefore, the idea of removing the dissolution of Christian marriage from the aegis of the Yoruba customary courts is a right step in the right direction and since what is good for the goose is also good for the gander, the dissolution of Islamic marriages should also be removed from the Yoruba Customary Courts to the *Sharī'ah* Courts.

v. For Nigerian Constitution to be durable and acceptable by the majority of the Nigerian populace, it must take into consideration interests of all various groups. The interest of the Nigerian Muslims is to see that *Sharī'ah* is well entrenched in the constitution and is applied in any part of the country. A situation whereby a Northern Muslim will not be opportuned to have his marital issue resolved according to his religious injunctions in the South where he lives until he goes back to the North is absurd. It is on this note we subscribe to the submission of Ajetunmobi that 'courts should be made available for every group of the populace everywhere in the country so that justice can be obtained where the offence was committed or in the area in which the defendant is resident or sojourns at the time when the cause of action arose.'[29]

6.2.4 **Democracy and the *Sharī'ah***

Since democracy is commonly defined as 'government of the people by the people, and for the people,[30] and in view of the fact that Nigeria has returned to democratic rule, Muslims need to exploit the situation as part of the people under democracy to get their right on *Sharī'ah* as dividend of democracy. Moreso, one of the important dividends of democracy is freedom to ask for one's right.[31] With the present constitutional provision for *Sharī'ah,* should the Muslims be united under democracy, their fundamental rights as provided by the constitution with regard to

Sharī'ah can be easily attained.[32] It is on the basis of this that the following recommendations are made:

i. The Muslims in Oyo and Osun States and all other Yoruba States should take advantage of Islamic Unity as stipulated in the Qur'an by establishing a common force in each state for the purpose of demanding for the establishment of *Sharī'ah* Courts.

ii. Such a united force should bring about a memorandum jointly signed by all stakeholders on Islamic matters in the state demanding for the establishment of *Sharī'ah* Courts in the State as provided in the constitution. The memorandum should then be forwarded to the State Houses of Assembly for consideration.

iii. In order to achieve success on number (ii) above, Muslims in each state should actively and effectively participate in the democratic process of the state with a view to electing Muslims to form the majority of the House of Assembly members. Apart from that, they should also take into consideration who becomes the governor of the state so that the Bill on *Sharī'ah* could be signed into law without fear or hindrance.

iv. For the purpose of achieving (i) and (ii) above, Muslims in all nooks and crannies of the state should be mobilized, educated and motivated to participate in democratic set up at various levels of the government. Not only that, they should show interest in vying for political posts either at Local, State and Federal levels.

v. An active and virile political awareness committee should be set up at various levels to carry out the assignment of education, mobilization and motivation.

6.2.5 **General Recommendations**

Aside the specific recommendations mentioned above, we still deem it necessary to make general recommendations about *Sharī'ah*. They are therefore stated thus:

i. The Independent *Sharī'ah* Arbitration Panel in Oyo State is a commendable development. It has created awareness about *Sharī'ah* not only in the State but even outside. It was this good gesture that Osun State has emulated. It is therefore recommended that all other states in Yorubaland should emulate Oyo State. Muslims in the States where Independent *Sharī'ah* Arbitration Panels have been established should co-operate, support, and mobilize Muslims of other states to patronize the *Sharī'ah* Panel. By doing this, the government will later come to appreciate the significance of *Sharī'ah* to the Muslims and will eventually approve the establishment of *Sharī'ah* Courts in the State.

ii. For the Independent *Sharī'ah* Arbitration Panel to be well recognized, experienced and well versed Islamic Scholars should be appointed as judges or panelists. Legal practitioners who are well versed in *Sharī'ah* law should also be appointed. All necessary paraphernalia of a court should be provided in the place where cases are heard with a view to ensuring standard. A court clerk should be employed and remunerated accordingly. The penalists or judges if not placed on full salary should be given some allowances commensurate with the job they do. Necessary qualities required of a judge, apart from knowledge according to the stipulation of *Sharī'ah* like justice, uprightness, maturity and interpretation ability[33] should be considered by those to be appointed as judges.

iii. There should be training for the personnel and officials who handle *Sharī'ah* matters under the Independent *Sharī'ah* Arbitration Panel. These

include the judges and the clerks as well as other persons who do one job or the other. This will help them in updating their knowledge on the job.

iv. Effort should be made to establish *Sharī'ah* law departments at the various law faculties of the Universities in the South for Southern Muslims who are interested in reading *Sharī'ah* law. Such departments should then create opportunities for legal practitioners of *Sharī'ah* orientation to train and re-train. Diploma programmes could be organised for Islamic Scholars who handle *Sharī'ah* issues at the independent or private levels for them to train and update their knowledge.

v. Different Islamic organizations and associations in Yorubaland should emulate *Zumratul-Mū minī n* popularly called 'Ijo Bamidele' of Ibadan and Islahud-din Missionary Association of Iwo in their initiative of applying *Sharī'ah* law system to some extent amongst their membership. This is necessary with a view to preparing the generality of the Muslims in various states of Yorubaland for eventual establishment of *Sharī'ah* courts as well as create awareness on *Sharī'ah* at different areas or states of Yorubaland.

vi. Religious intolerance is observed to be the major factor militating against the establishment of *Sharī'ah* Courts in Oyo and Osun States in particular and Yorubaland at large. With all assurances that *Sharī'ah* courts will only be used by Muslims when established, non-Muslims still kick against it. To get rid of the antagonism from the non-Muslims particularly the Christians, we recommend that consultation be made with them in order to carry them along on the *Sharī'ah* matter. Our recommendation is informed by the submission of a Christian Priest who states thus:

> Since the two religions have been on each other's neck for the expansion or non-expansion of *Sharī'ah* in Nigeria for the past fifty year, 1950-2000, a polite and brotherly way of re-introducing the issue should be by consulting the authentic national leaders of the Christian Association of Nigeria (CAN) even if the Muslim leaders assumed that the leaders of CAN would say, NO, but that would be a point in favour of the Muslim leaders Who would say at least we consulted our Christian Brothers and sisters.[34] (emphasis mine)

vi. We recommend that the Governments of Oyo and Osun States should look at the issue of *Sharī'ah* with a view to actualizing the dream of the entire Muslim citizenry of the two States in the establishment of *Sharī'ah* Courts which will handle the matters relating to Muslim personal law of marriage, divorce and inheritance. It is when this is done for the Muslims that the Muslims' fundamental right could be said to have been given to them. Any attempt to delay this could be described as denial of their religious right and this is injustice.

On a final note, we want to state that *Sharī'ah* is a system which aims at inculcating discipline in the humanity and ridding them of indiscipline in the context of belief. Akintola observes that 'if the Muslims are allowed to use *Sharī'ah*, every Muslim will become conscious of his duty and of his religion. *Sharī'ah* is also a training ground such that Muslims who become leaders in the country or in a state would have become used to a life of transparency, honesty and dedication to duty.'[35] Since the country and human society at large have been bastardized with various social vices and crimes, and all efforts made to redress this anomaly has not yielded any fruitful results, it is our candid opinion that *Sharī'ah*, if allowed to be used, will get rid of many social vices and the criminal tendencies of the country will reduce to the bearest minimal.

Lastly, it is our hope that this work will be of great benefits not only to the Muslims who will want to know something about the application of *Sharī'ah* in Oyo and Osun States in particular and Yorubaland in general, but also to researchers who want to carry out research on *Sharī'ah*. It will also be beneficial to

the government either at the state or federal level in their plan towards establishing *Sharī'ah* Courts in the Southern part of Nigeria. It is also our belief that *Sharī'ah* specialists, lecturers and students in the field of *Sharī'ah* may find this thesis useful. It is our prayer that Almighty Allah will make this work beneficial and useful not only for the purpose of research but also for the course of establishing *Sharī'ah* Courts across Yorubaland.

NOTES AND REFERENCES TO CHAPTER SIX

1. Ajetunmobi, M.A. 1988. *Shari'ah* legal practice in Nigeria: 1956 – 1983. Ph.D.Thesis. Dept. of Religion. University of Ilorin. pp.393.
2. Abdullah, U.Y. 1998. *Shari'ah in Africa*. Ijebu-Ode: Shebiotimo Publications. p.78.
3. Haque, M.'s, Interview with Prof. Dawud Noibi on 'Implementation of *Shari'ah* in Nigeria. *MWL Journal*, Safar 1422, May 2001. p.31.
4. Quadri, Y.A. 2000. *Shari'ah*: the Islamic way of life. Being the text of the 7th Ramadan Lecture organised by the University of Ibadan Muslim Community on 2nd January, 2000, p.12.
5. Haque, *Op.cit*. p.31.
6. Quadri, *Op.cit*. p.29.
7. Maududi, S.A. 1986. *The Islamic law and constitution*. New Delhi: Taj Company. pp.48 - 49.
8. Quadri, *Op.cit.* p28.
9. Onaiyekan, J. 2000. The *Shari'ah* in Nigeria: Issues and Perspectives. A paper presented at the national seminar on *Shari'ah* at Kaduna on 12th February. p.5.
10. Read more about this in S.H. Al-Kanawi, '*Shari'ah* and the press in Nigeria (Book Review). Retrieved on June 10, 2003 from KKDLAP *Shari'ah* in Nigeria htm p.3
11. Omikunle, T. Ed.1992. *Oyo State annual*. Lagos: Visionlink Nig. Ltd. p.63.
12. Adenaike, F.A. Ed.1991, *The Pioneers*. Ibadan: Syndicated Communication Ltd.p.6.
13. Gbadamosi, T.G.O. 2000. *Shari'ah* in Nigeria: experience of the Southern Nigeria. A seminar paper presented at the National Seminar on *Shari'ah* at Kaduna between 10th and 12th February. p.2.
14. Ambali, M.A. 1998. *The practice of Muslim family law in Nigeria*. Zaria: Tamaza Publishing Company Ltd. p.29.

15. Gbadamosi, *Op.cit.* p.7.
16. Okunola, M.A. 1993. The Relevance of *Shari'ah* to Nigeria. N. Alkali, et al Eds. *Islam in Africa.* Ibadan: Spectrum Book Ltd. p.28.
17. *Ibid.*
18. *The Punch* of Thursday 28th October, 1999 reported the story of the public rally organised by Osun State Unit of MSSN in Osogbo demanding for the introduction of *Shari'ah* in the State.
19. The Bill is provided under appendixes. It was prepared by a Muslim group which lobbied the House to pass it into law but all to no avail.
20. The memo is also provided under appendixes. It was prepared and submitted to the Osun State House of Assembly in 1999 during the demand for memoranda for the Review of 1999 Constitution.
21. An interview with the court clerk of the Independent *Shari'ah* Arbitration Panel in Ibadan, Bro. Oyeniran Saheed (28 years), on 20th May, 2004.
22. Abdul-Salam, H.A. 1996. Matrimonial issues among Yoruba Muslims of Nigeria. Ph.D. Thesis. Dept. of Religion. University of Ilorin. p.325.
23. Quadri, *Op.cit.* p.28.
24. Akintola, I. 2001. *Shari'ah in Nigeria: an eschatological desideratum.* Ijebu - Ode: Shebotimo Publications. p.189.
25. Tabi'u, M. 1987. Controlling the crime rate in Nigeria through *Shari'ah.* Rashid, S.K. Ed. *Shari'ah Social Change and Indiscipline in Nigeria.* Sokoto: University of Sokoto. p.183.
26. Amoloye, J.A. 1987. *Shari'ah* and Nigeria's problem of indiscipline: certain aspect.Rashid, S.K. Ed. *Ibid.* p.202.
27. Tabi'u, *Op.cit.* p.190.
28. *Ibid*. p.187.
29. Ajetunmobi, *Op.cit.* p.433.
30. Cohen, C. 1971. *Democracy.* U.S.A.: University of Geogia Press. p.3.
31. Makinde, A.K. 2004. Muslims and democracy in Nigeria: the place of *Shari'ah* legal system. Proceedings of the 20th National Conference of the Nigeria Association of Teachers of Arabic and Islamic Studies (NATAIS), M.A. Muhibbu-din. Ed. *Islam and Democracy in Nigeria*. Ijebu-Ode: Shebiotimo Publishers. p.68.

32. *Ibid*. 70.

33. Read more of this in F.h. Ruxton. 1916. *Maliki Law.* London: Luzac & Company. p.273.

34. Dodo, D.D. 2000. Understanding Christians and Muslims over the adoption of the full scope of the Islamic *Shari'ah* law in Nigeria. A paper presented at Abuja between 21st and 22nd June. p.15.

35. Akintola, *Op.cit.* p.140.

REFERENCES

Arabic Sources:

Ibn Manzum, n.d. *Lisanul – Arab*. 8. Lebanon: Dar Sadar Publishers.

Sanusi, M.Z. 1987. *Azhar ar-ruba fi akhbar bilad Yuruba*. Bayrut: n.p.

English Sources:

Abd al – Masih, K.O. and Ibn. Salam, M.J. 2000. *What you have not heard about the Shari'ah question*. n.t: JPC Inc.

Abdul, M.A.O. 1982. *The selected traditions of al-Nawawi(text, transliteration and commentary)*. Lagos: Islamic Publication Bureau.

Abdullah, E.O. 1995. Typology of research. *Research methodology in education: an interdisciplinary approach*. S.A Jimoh. Ed. Ilorin: University of Ilorin, Library and Publication committee.

Abdullah, U.Y. 1998. *Sharia in Africa*. Ijebu–Ode: Shebiotimo Publication.

Adenaike, F.A. Ed. 1991. *The pioneers*. Ibadan: Syndicated Communication Ltd.

Ajibola, J.O. 1982. *Administration of justice in the customary court of Yorubaland.* Ibadan: University Press Ltd.

Akintola, I. 2001. *Shari'ah in Nigeria: an eschatological desideratum*. Ijebu–Ode: Shebiotimo Publication.

Akram, M. 1987. Shari'ah and armed robbery in Nigeria. *Shari'ah Social Change and Indiscipline in Nigeria*. S.K. Rashid. Ed. Sokoto: The University of Sokoto Press. 207 - 216.

Ali, A. Y. 1999. *The holy Qur'an: text, translation and commentary.* New Delhi: Thomson Press.

Ambali, M.A. 1998. *The practice of Muslim family law*. Zaria: Tamaza Publishing Company Ltd.

Amoloye, J.A. 1987. Shari'ah and Nigeria problem of Indiscipline: certain aspects. *Shari'ah Social Change and Indiscipline in Nigeria*. S.K. Rashid. Ed. Sokoto: The University of Sokoto Press. 193 – 206.

Amin, S.H. 1985. *Islamic law in the contemporary world: introduction, glossary and bibliography.* Glasgow: Royston Limited.

Anderson, J.N.D. 1969. The legal tradition. *Islam in Africa.* J. Kritzeck and W.H Lewis. Eds. New York.

Cohen, C. 1971. *Democracy*. USA: University of Geogia Press.

Cowan, J.M. 1960. *A dictionary of modern written Arabic*. India: Modern Language Service.

Daramola, S.O. 1995. Sample and sampling techniques. *Research Methodology in Education: An interdisciplinary approach.* S.A. Jimoh Ed. Ilorin: University of Ilorin, Library and Publication Committee. 116 -125.

Doi A.R.I. 1984. *Islam in Nigeria*. Zaria : Gaskiya Corporation Ltd.

----------,1984. *Shari'ah : the Islamic law*. London: Ta Ha Publishers.

----------,1987. Shari'ah: A misunderstood and maligned system of law. *Shari'ah Social Change and Indiscipline in Nigeria*. S.K. Rashid. Ed. Sokoto: The University of Sokoto Press. 39 – 54.

Eliade, M. 1995. *The encyclopaedia of religion*. 8. New York: Simon and Schaster Macmillan.

El-Masri, F.H. 1967. Islam in Ibadan. *The City of Ibada*n. P.C.Lloyd et al. Eds. Ibadan: Oxford University Press.

Fajemidagba, M. O. 1995. Research Design and their Statistical Implications. *Research methodology in education; an interdisciplinary approach*. S.A. Jimoh. Ed. Ilorin : University of Ilorin, Library and Publication Committee.

Federal Republic of Nigeria, 1999. *1999 constitution of the federal republic of Nigeria*. Lagos : Federal Government Press.

Gbadamosi T.G.O. 1978. *The Growth of Islam among the Yoruba 1841 – 1908.* London : Logman Group Limited.

Hammudah, A. 1982. *The Family structure in Islam*. Lagos: Islamic Publication Bureau.

Hitti, P.K. 1970. *History of the Arabs*. London: Macmillan Publisher Ltd.

Houstsma, M.TH. & Co. 1934. The *encyclopedia of Islam*. London: E.J. Brill Limited Publishers and Printers.

Hunwick, J.O. 1965. Islam in West Africa, A.D. 100 – 1800. *A Thousand Years of West African History*. J.F.A. Ajayi and I. Espie. Eds. Ibadan: Ibadan University Press. 113 – 131.

Husaini, S.A. 1954. *The constitution of the Arab empire*, Lohore: SH. Muhammad Ashraf.

Johnson S. 1997. The *history of the Yorubas*. Lagos: CSS Bookshops Ltd.

Karim, M.K. 1960. *Al–Hadis: An English translation of mishkat-al-masabih*. Lahore: The Book House Publishers and Booksellers

Kumo, S. 1986. The application of Islamic law in northern Nigeria: Problems and prospects. *Islamic law in Nigeria: Application and teaching*. S.K. Rashid. Ed. Lagos: Islamic Publication Bureau.42 – 51.

Makinde, A. K. 2004. Muslims and democracy in Nigeria: the place of Shari'ah legal system. *Islam and democracy in Nigeria.* M.A. Muhibbu-ddin. Ed. Ijebu-ode: NATAIS. 64 -73.

Maududi, S.A 1986. *The Islamic law and constitution*. Delhi: TAJ company.

Ministry of Information, 2000. *Information month 2000 – democracy day.* Osogbo: Osun State Government Press.

Muslehuddin, M. 1988. *Philosophy of lslamic law and the orientalists.* London: TAJ Company

Nasr, S. H. 1979. *Ideals and realities of Islam.* London: George Allen and Unwin Publishers Ltd.

Neilson, W.A. Ed. 1934. *Websters' new international dictionary*, 2nd ed. USA: G & C Merriam Company.

Noibi, D.O.S. 1988. *Islamic perspective (A comprehensive message).* Ijebu-Ode: Shebiotimo Publication.

Obiyemi, W. 1995. Writing research project. *Research methodology in education: an Interdisciplinary approach*. S.A. Jimoh. Ed. Ilorin: University of Ilorin, Library and Publication Committee. 191 – 198.

Okunola, M.A. 1993. The relevance of Shari'ah to Nigeria. *Islam in Africa.*. Alkali, N. et.al. Eds Ibadan: Spectrum Books Ltd.

Omikunle, T. Ed. 1999. *Oyo state annual.* Lagos; Vision link Nigeria Limited.

Osogbo Cultural Heritage Council, 1994. *History of Osogbo.* Osogbo: Igbalaye Press Limited.

Osun State Government 1992. *Osun state so far*. Osogbo: Ministry of Information.

----------, 1992. *Osun state: the state of living spring*. Lagos: Macmillan Nig. Publishing Ltd.

Oyeweso, S. 1999. *Eminent Yoruba Muslims. Ibadan:* Rex Charles Publication.

Oyo State Government, 1999. *A new era*. Ibadan: Oyo State Government Press.

----------,1978. *The laws of Oyo state* of Nigeria. 2.

Park, A.E.W. 1963. *The sources of Nigerian law.* Lagos: African University Press.

Qadr, A.A. 1963. *Islamic jurisprudence in the modern world*. India: Aligarh, University Press.

Rashid S.K. Ed. 1986. *Islamic law in Nigeria: application and teaching*. Lagos: Islamic Publication Bureau.

Ruxton, F.H. 1916. *Maliki Law*. London: Luzac and Company.

Schacht, J. 1950. *The Origins of Muhammad jurisprudence*. London: Oxford University Press.

----------, 1964. *An introduction to Islamic law.* London: Oxford University Press.

Sulaiman, I.K.R. 1986. The Shari'ah and the 1979 constitution. *Islamic Law in Nigeria: application and Teaching.* S. K.Rashid. Ed. Lagos: Islamic Publication Bureau. 52 – 74.

----------, 1987. Victor takes all: the Shari'ah in secular Nigeria. Shari'ah, *social change and indiscipline in Nigeria*. S.K. Rashid. Ed. Sokoto: the University of Sokoto Press. 55 – 64.

Stride G.T. and Ifeka C. 1971. *People of empires of West Africa*. Lagos: Thomas Nelson (Nig.) Limited.

Tabi'u M. 1987. Controlling the crime rate in Nigeria through Shari'ah. *Shari'ah, social change and indiscipline in Nigeria*. S.K. Rashid. Ed. Sokoto: The University of Sokoto Press. 183 – 191.

The University of Chicago. 1959. *Encyclopaedia Britannica*. Chicago: Encyclopaedia Britannica.

----------, 1981. *The new encyclopaedia britannica.* 9. Chicago: Helen Hemingoray Publishers.

Udo, R.K. and Mammon A.B. Eds. 1993. *Nigeria giant in the tropics.* Lagos: Gabuno Publishing Company Ltd.

Umar, A.I 1987. Shari'ah as a means to solve modern problem. *Shari'ah, social change and indiscipline in Nigeria*. S.K. Rashid, Ed. Sokoto: The University of Sokoto Press. 217 223.

Ph.D THESES

Abdul-Rahmon, M.O.1989. A thematic and stylistic study of Arabic poetry in Ibadan (1867 – 1986). Ph.D. Thesis. Arabic & Islamic Studies. University of Ibadan.

Abdul – Salam, H.A. 1998. Matrimonial issues among Yoruba Muslims in Nigeria. Ph.D. Thesis. Dept. of Religions. University of Ilorin. xxii + 341.

Ajetunmobi, M.A. 1988. Shari'ah legal practice in Nigeria 1956 – 1983. Ph.D. Thesis. Dept. of Religions. University of Ilorin. xxiv + 552

Awe, B.A, 1964. The rise of Ibadan as Yoruba power in the 19th century. Ph.D. Thesis. Dept. of History. University of Ibadan.

Okunola, M.A. 1984. Interaction between Islamic law and customary laws of succession among the Yoruba. Ph.D. Thesis. Dept of Law. University of Lagos.

Sheikh, A.A. 1996. A study of the Shari'ah and its application in Nupeland (1832 – 1960). Ph.D. Thesis. Dept of Arabic & Islamic Studies. University of Ibadan.

M.A. PROJECTS

Adejumo, G.M. 1995. Influence of Islam in Ede. M.A Project. Dept of Arabic & Islamic Studies. University of Ibadan. ix + 110.

Seriki, I.A.A. 1981. Shari'ah provisions in the 1963 and 1979 constitutions of Nigeria: a comparative study. M.A. Project. Dept. of Arabic & Islamic Studies. University of Ibadan. viii +170.

Tijani, D.A.A. 1983. Alhaji A.B. Muhammad of Iwo in Oyo State (Now Osun State) of Nigeria and the Islahudeen society. M.A.Project. Dept of Arabic & Islamic Studies. University of Ibadan. xiii + 135.

LONG ESSAYS

Adegoke, O.F. 1985. The Bamidele movement in Ibadan. NCE Project. Dept of Islamic Religious Studies. Oyo State (now Osun State) College of Education, Ila-Orangun. vi + 41.

Afolabi, L.A. 1996. The activities of the Faaya group of the Bamidele movement in Ikirun. NCE Project. Dept. of Islamic Studies. Osun State College of Education, Ila-Orangun. viii + 34.

Bakare, K.O.1982. Advent and growth of Islam in Ikirun. NCE Project. Dept. of Religious Studies. Oyo State (now Osun State) College of Education, Ila-Orangun. vi + 42.

Hamzat, T.K. 1991. Imanship institution in Iwo central mosque. B.A.Project. Dept. of Arabic & Islamic Studies. University of Ibadan.

Makinde, A.K. 1990. A study of the life and Arabic works of Alhaji Ashiru Irewole of Osogbo. B.A. Project. Dept. of Arabic & Islamic Studies. University of Ibadan. ix + 84.

Raheem, B.R. 1987. The contributions of *Rawdat al–Dirasat al–Islamiyyah Wal – Arabiyyah* to the spread of Arabic language in Ikirun. B.A.Project. Dept. of Religions. University of Ilorin.

JOURNAL ARTICLES

Abdul-Salam, H. 2001. A brief appraisal of Islamic law (Shari'ah) in Nigeria. *NATAIS Journals* 6. 1: 34 – 42.

Doi A.R.I. 1969. Bamidele movement in Yorubaland. *Orita Ibadan Journal of Religious Studies* 3. 2: 101 – 118.

Haque, M. 2001. An interview with Prof. Dawud Noibi on implementation of Shari'ah in Nigeria. *Muslim World League Journal 29*.2: 29 – 33.

MAGAZINE/NEWS PAPER ARTICLES

Nwosu, S. 2000. Fears over Shari'ah exaggerated. *This Day*, July 25.

Odeh, N. A. 2002. Shari'ah court sentences a woman to death by stoning. *The News* 19. Sept. 2.

Osho, S. 1999.Who is afraid of Shari'ah. *Nigerian Tribune*. Nov. 15: 28.SS

INTERNET RESOURCES

Adeeb, S. 2003. Islamic Nigeria court sentences women to death by stoning. *Save Nigerian Islamic Women from Barbarity.* Retrieved June 10, from http. //www.geociticies. com/4RF info.

Al-Kanawi, S.H. 2003.Shari'ah and the press in Nigeria (Book Review).Retrieved June 10, 2003, from KKDLAP Shari'ah in Nigeria htm.

Muslim Women's League. 2003.The draft of a letter sent to the Governor of Zamfara, Nigeria about the adultery case.Retrieved Oct. 6, 2003 from file:/ϖ/KKDLAP/c/Shari'ah, The % 20 Draft.

APPENDIX I

MEMORANDUM TO MEMBERS OF THE CONSTITUENT ASSEMBLY ON THE *SHARI'AH* IN THE DRAFT CONSTITUTION IN 1978

BY

MR. DAWUD OLATOKUNBO SHITTU NOIBI

AND

DR.SAYED TUNDE MALIK

Introduction:

We have followed with keen interest the debates in the news media on the issue of the *Shari'ah* as provided for in the Draft Constitution and have taken particular note of the communiqués issued by various Christian organizations calling for the exclusion of such provision from the Draft. We are fully convinced that the premises on which the various anti- *Shari'ah* demands were based are erroneous and therefore misleading. Some of them have indeed emanated not only from ignorance of what *Shari'ah* really is but also from antipathy to Islam. We have no doubt in our mind that such pronouncements are capable of marring the unity of this nation. Consequently, as citizens of Nigeria and as scholars of Arabic and Islamic Studies, we feel constrained to speak up and correct the wrong impressions which these anti- *Shari'ah* views might have created in the minds of the Honourable members of the Constituent Assembly and the public in general thus giving the nation the benefit of our scholarship.

The Need for *Shari'ah* in our Judicial System:

The need to guarantee the freedom of worship in our constitution is a *sine qua non*. But the *Shari'ah* is such a concomitant of Islam that to deny a Muslim access to it is to infringe on his right to the freedom of worship. This is because Islam is not just a set of rituals but a complete way of life. As Professor Seyyed Hossein Nasr has rightly observed, "religion to a Muslim is essentially the divine law which includes not only universal moral principles but details of how man should conduct his life and deal with his neighbours and with God; it includes all aspects of human life and contains in its tenets the guide for a Muslim to conduct

his life in harmony with the divine will". (*Ideals and Realities of Islam,* London, George Allen & Unwin Ltd. 1971, pp. 95 & 96). Even non-Muslim scholars of Islamic Law appreciate this empirical truth. For instance, Professor Joseph Schacht, despite his prejudices against Islam, admits that "the *Shari'ah* is the most typical manifestation of the Islamic way of life… the core and kernel of Islam itself" (*An introduction to Islamic Law,* Oxford, 1964, p.1). Similarly, Professor J.N.D. Anderson sees the *Shari'ah* as "explicit and assured in its enunciation of the quality of life which God requires of men and women" ("*The Legal Tradition"* in J. Kritzeck and W.H. Lewis (ed), *Islam in Africa,* New York, 1969, p.35).

Being ignorant of the facts mentioned above, most of those compatriots who are opposed to the *Shari'ah* do not appreciate the fact that, unlike other faiths, Islam provides for its adherents guidance in all aspects of human endeavour and obliges them to follow strictly that guidance. Consequently, all true Muslims honestly and earnestly believe that their success in this life and salvation in the next life lie in a strict adherence to that guidance. Muslims are frequently enjoined in the Qur'an to obey Allah and His Messenger and those in authority among them, and that if they differ among themselves in a matter, they should refer it to Allah and His Messenger (Qur'an 4:59). The Qur'an also warns "… and whosoever judges not by what Allah has revealed, these it is who are the wrongdoers". (Q5:45). This warning is repeated again and again in chapter 5, verses 46 and 48. Reacting to the non-Muslims' attempt to dissuade the Prophet from applying the laws of the faith, Allah enjoined him as follows: "… judge, therefore, between them (your followers) by what Allah has revealed and follow not their evil inclinations, turning away from the truth which has come to thee…" (Qur'an 5:49). So, it is clear that the Muslims' demand for provisions for the *Shari'ah* in the Constitution is not based on whims and caprices as some critics have dared to suggest; it is in accordance with the requirement of their faith.

And since the teachings of Islam include contractual transactions such as marriage, commercial transaction as well as criminal matters etc. between members of the society, the state, be it secular or not, cannot afford to stand aloof; it has the responsibility to provide the judicial apparatus for the administration of justice among Muslim litigants on the basis of the law they have chosen.

Since the *Shari'ah* is Islam and Islam is *Shari'ah* the latter is as old in Nigerian as the former. Therefore, its advent dates back far beyond the beginning

of the 19th century when it was only given a strong official recognition and organized by the Sokoto Jihadists. By the beginning of that century, the *Shari'ah* completely replaced whatever was left of the pagan legal practices in parts of the areas now known as the Northern States. At that time and until the British came, it was applied in all its ramifications – civil and criminal. But the British super-imposed the English law on it and progressively confirmed its jurisdiction to the Muslim Personal matters.

It is worthy of note, however, that the British did not attempt to scrap the *Shari'ah* as some compatriots have suggested we should do. Rather, Lord Lugard aptly observed on page 92 of his *Political Memoranda* that "it is very essential for British officers, in the provinces where there is a considerable Muslim Population, to have some knowledge of Muhammadan Law, both in order that their supervision of the Native Courts may be intelligent and effective and in order that they may know how to observe and enforce native law and custom in civil case……" The attention of these compatriots who have dared to call for the scrapping of *Shari'ah* Courts is especially drawn to that observation made by a Colonial Governor.

A Muslim Court of Appeal was established for the former Northern Region in 1956. It was later designated *Shari'ah* Court of Appeal and it served the Northern States under the Gowon regime until more states were created in 1976 and it gave way to a *Shari'ah* Court of Appeal for each of 9 of the 10 Northern States. Those who think that Islamic law does not require provisions for appeal or that the Qur'an does not allow appeal cannot claim to know Islamic Law better than authorities in it. There is a *Shari'ah* judicial hierarchy in each of Saudi Arabia and Afghanistan up to this day (N.J. Coulson, *A History of Islamic Law,* Edinburgh, 1964, p.163).

The need for a Federal *Shari'ah* Court of Appeal is therefore glaring: any matter that involves more than one state automatically becomes a Federal concern. We cannot afford the folly of encouraging a number of States to pull together to the exclusion of others.

Moreover, if the Area Courts in the Northern States handle between 90% and 99% of total litigations in all the courts of the States, and if not less than 70% of these cases are decided according to Islamic Law, (Dr. Gwarzo, New Nigerian,13/9/77), it will be most unfair to give litigants in such a huge number of cases only one chance of appeal, namely, to the state *Shari'ah* Court of Appeal,

whereas litigants in the rest 30% have three chances of Appeal to the high. Neither is the idea of integrating the proposed Federal *Shari'ah* Court of Appeal with the Federal Court of Appeal acceptable: since, according to Section 192 (3) of the Draft, the decision of a court consisting or more than one Judge shall be determined by the opinion of the majority of its members". According to the qualifications required of the Justice of that Court-Section 151 (1) – the majority of its members shall be people not learned in Islamic Law. In such a circumstance there cannot emerge therefore a decision that is strictly in accordance with Islamic Law.

Nor should the *Shari'ah* Court be restricted to the Northern States. For, contrary to the erroneous view held by most Nigerian non-Muslims, the influence of the *Shari'ah* has not been confined to the Northern parts of this country. There is abundant evidence of the influence of the *Shari'ah* among the Yoruba. There are expressions such as "*O da seriya fun un"* (he meted out to him the punishment he deserved accordingly to the *Shari'ah*); o to suna". (It is in line with the Sunnah i.e. it is legally right-Sunnah is an Islamic legal term meaning the model practice of Prophet Muhammed P.B.O.H). These and many other Islamic legal expressions are often used by the average Yoruba be he a Muslim, Christian or Traditional worshipper.

Moreover, there are several families in parts of Yorubaland who are identified as '*alikali'* families because their ancestors were *Shari'ah* Court judges. Oba Abibu Lagunju, the first Muslim Timi of Ede, Oyo State (now Osun State), who ruled during the second half of the 19th century, gave the *Shari'ah* an official recognition in his domain (L.A. Dokun, *Islam in Ede* B.A. long essay, submitted to the Department of Arabic and Islamic Studies, University of Ibadan, June 1974, pp. 31, 32). And in 1913 a *Shari'ah* Court was officially established in the town. The first *qadi* (*alikali)* of the Court was one Sindiku (*siddiq)* who recorded the proceedings in the Arabic language, (Population Census of Nigeria, May 1962: Historical Events for Ede District Council, p.1).

As early as 1923, the Muslim population of Lagos showed signs of demand for *Shari'ah* Courts following the unsatisfactory decision of a Lagos English Court in the case involving one Awawu Thomas, (The African Messenger Newspaper Janaury 17, 1924). In 1938, a group of Mallams and students petitioned the government demanding the establishment of *Shari'ah* Court in Ibadan. Again,

sometime before independence, the Muslim Congress of Nigeria with headquarters at Ijebu-Ode sent a letter to the Chief Secretary to the Government demanding the establishment of *Shari'ah* Courts for "Southern Nigeria" and lamenting that the "Muslims in the Southern provinces of Nigeria have long been deprived of the use of the *Shari'ah*". In a similar letter forwarded to the Brooke Commission, the Congress asserted that "in almost all towns and villages of the Western provinces, Muslims are in the majority". (J.N.D. Anderson, *Islamic Law in Africa,* London, frank Cass and Co Ltd., 1970 Pages 222 and 223).

It is clear from the above that the Muslims in the Southern part of this country have not been indifferent to the issue of the *Shari'ah.* In fact they have been increasingly disturbed by apparent government disregard for the *Shari'ah.* And it is reassuring that they are now, far more than ever, conscious of their right to it and are determined to assert that right. Therefore, any anti-*Shari'ah* opinion expressed in the Constituent Assembly by any member from any of the Oyo, Ogun, Ondo, Lagos and Bendel States should not be taken as representative but as a stray opinion. The establishment of *Shari'ah* Courts in these states is long over-due.

Criticisms:

Some opponents of the *Shari'ah* provisions in the Draft have claimed that the "*Shari'ah* is an instrument of oppression and injustice" whatever that means. However, they have failed to adduce a single proof of the validity of that claim convincing enough to dispel the suspicion that the accusation emanated from personal animosity against certain individuals or groups.

If some people made a wrong use of Area Courts in the Northern part of the country during the premilitary period, others also misused Customary Courts in the Southern areas during the same period. It is not the system itself that is faulty but the method of its duration. What we need is really the independence of the judiciary without which no court however highly esteemed can operate without fear or favour.

Out of sheer ignorance, some people have claimed that the Islamic Criminal Law is archaic and barbaric (e.g. J. Olu Awopeju, Nigerian Tribune, 29/11/77). That ignorance is betrayed by the misinterpretation of verses of the Qur'an cited in support of this claim, namely, those which prescribe the cutting of the hand of a thief and the flogging of persons found guilty of adultery. For

instance, they are unaware of the fact that the punishment for theft prescribed by the Qur'an, 5:38 is only the maximum one for that offence, and that there are lighter ones. That maximum punishment is meant for those habitual thieves who have failed to take advantages of previous warning which lighter punishments are supposed to be, or who operates in an already charged state of affairs in the society. The punishment meted out to the thief depends on the circumstances in which the offence was committed and on the state of society, the prescribed maximum punishment also presupposes that the culprit had access to good living by lawful means.

It is pertinent to draw attention to the relevance of this provision as well as the punishment prescribed by the Qur'an for armed robbery, highway robbery or decoity to our situation; the punishment for the latter crimes is, in a descending order of severity, the death penalty, or the cutting of the hand or foot, or imprisonment (Qur'an, 5:33) depending on the circumstances of the crime and the state of society. Owing to the alarming rate of armed robbery in our society, the Federal Military Government promulgated the Armed Robbery and Firearms Decree. It won popular acclamation for doing so. That decree has not been seen as barbaric even though by it a robber will face the guns if he is found guilty of stealing a paltry ₦10 after threatening his victim with a razor blade or a pen-knife.

One of our dailies, the Daily Sketch, in an Editorial Comment, even called for the death sentence for economic saboteurs and observed that there could be no question of legal decency, for "our existing laws cannot match the enormity of crimes that Nigerians are capable of committing (Daily Sketch Editorial Comment, Thursday 8/8/77). The *Shari'ah* has not gone that far, yet it is 'barbaric'! In any case, the important point to note is that the unconscious adoption, sometimes in excess, of the laws of Islam by a secular society points to the suitability of the laws of Islam revealed about 1400 years ago to the need of all times and places. It shows that despite man's efforts to relegate the word of God to the background and rely absolutely of his reason, he "has failed to find a substitute for the way of God" (Qur'an 17:77; 33:62); for "such is the law of Allah that has been in operation before and thou shall not find a substitute for the law of Allah" (Qur'an48:23). The effectiveness of the Islamic penal law as a deterrent is well demonstrated by the rareness of theft and robbery in countries where the Islamic penal law is in force, such as Saudi Arabia and, of late, Libya.

With regard to the punishment prescribed for adultery and fornication, owing to acute moral bankruptcy in our society, many people have failed to appreciate the evil results of adultery. Suppose a gang of robbers confronted a man with his wife or mother or daughter or sister, and asked him to choose either the surrender of that female relation of his to them for rape in his presence, or the surrender of his money, the choice of a man in his right senses will be obvious. If the honour of one's wife, mother, daughter or sister is dearer to one than material possession, and if severe punishment is due to a robber who robs you or your neighbour of your property or his, then is it reasonable or fair to regard the following injunction of the Qur'an as archaic or barbaric:

> The adulteress and the adulterer, flog each of them (with) a hundred stripes, and let not pity for them detain you from obedience to Allah, if you believe in Allah and the Last Day, and let a party of believers witness their chastisement (Qur'an 24:2)

Moreover, perhaps in no other jurisprudence is the guilt of a person accused of adultery or fornication difficult to prove as in Islamic Law, and it is not only a sin but also a crime in Islamic Law to accuse a person of adultery and fail to produce the required evidence (Qur'an 24: 4, 5).

Contrary to the impression a critic (Awopeju *op.cit*) gave, Muslims are not scared by any provisions of the penal laws of Islam. This critic and others like him would not have entertained that thought had they known that quite a number of supporters of the inclusion of the *Shari'ah* in the Constitution have called for the extension of its jurisdiction to criminal matters. If Muslims accepted the limiting of its jurisdiction to civil matters, that should be seen as a sacrifice and not as an evidence of willingness to escape from the criminal law of their faith.

The provisions of Islamic Law on commercial transactions are quite suitable for all times and all places including ours. For instance, the *Shari'ah* prohibits the hoarding of goods with a view to securing a monopoly and a consequent rise in price (Bukhari, 34:54). It also obliges the seller to disclose any defects in the articles he or she offers for sale to the intending buyer (*Ibid* 35:19).

Shari'ah prohibits the giving of short weights or measures in commercial transactions (Qur'an, 26 : 182-185; 83 : 1 - 4; 17:35).

We also like to draw attention to the misleading statements contained in an advertised announcement by an Ibadan Christian (Interdenominational) Protem Action Committee on the *Shari'ah* published by the Sunday Sketch of November 27th 1977, page 11 which may have come to your notice.

In an attempt to portray the *Shari'ah* as discriminatory against non-Muslims, the committee dishonestly and mischievously misinterpreted Qur'an 9:5 as giving "idolaters (followers of traditional religions) the choice of death or conversion to Islam" and Qur'an 9:29 as giving "Scripturary people (Jews and Christians)…the choice of death or submission to Muslim supremacy with the payment of tribute".

The committee's dishonesty is betrayed by the following facts:

i. With regard to Qur'an 9:5 the four verses immediately preceeding it (verses 1-4) state that it was as a result of idolaters breaking their peace agreement with Muslims and engaging in acts of aggression against the Muslims that fighting against them was permitted in verse 5;

ii. Accordingly, these verses (1-4) forbid fighting against those idolaters who continued to honour their peace agreement with the Muslims and enjoin that the Muslims must continue to hour their peace agreement with them to the end;

iii. Even verse 5 which the committee simply paraphrased out of context states categorically that Muslims should stop fighting these treacherous idolaters as soon as the later desisted from aggression against the Muslims.

iv. Verse 6 enjoins Muslims to grant protection to any idolaters who sought it and verse 7 states that as long as the idolaters were true to

the Muslims in the matter of the agreement, the Muslims must be true to them.

The said Protem Action Committee cannot claim to be ignorant of these facts; they cannot convince anyone that they did not read those verses (1-7) the fifth of which they mischievously misinterpreted.

v. As for verse 29 of the same chapter, the background is as follows: The Jews in and around Medinah had for a long time collaborated with the idol worshippers among the Arabs in their joint struggle to uproot Islam and exterminate the Muslims. Similarly the Christian Roman Empire had mobilized its forces to subjugate the new religion. Consequently, the Muslims were ordered to defend themselves and their religion by subjugating the enemies and asking them to pay *jizya.* By the way, the *jizya* was a tax required of them as a compensation for the protection which was guaranteed them, the non-Muslim subjects being understandably free from military services; it was unreasonable to entrust the defense of the nascent Muslim Community to those who were out to destroy it.

Not only does Islam give non-Muslims living in an Islamic State absolute freedom of religion, it also allows them to propagate their religion even to the extent of criticizing Islam in the process. Whatever be the extent of oppression which a non-Muslim state may perpetrate on its Muslim citizens it is not permissible for an Islamic State to retaliate on its non-Muslim subjects in the slightest degree (see Abul A'la Maududu, *Human Rights in Islam,* the Islamic Foundation 1976, p.11).

It is not in the interest of national unity and peace that a section of our people indulge in mischievously portraying the faith cherished by another section

in bad light through dishonest interpretation of sources or the dishonest use of unofficial ones that contain personal views.

One other criticism is the mischievous suggestion that the *Shari'ah* provisions in the Draft Constitution are tantamount to giving Islam a preferential treatment and an attempt to make Islam a state religion. The jurisdiction of the *Shari'ah* Courts, as stated in the Draft: (Section 184 (3) (a) - (e) and section 186 (1) and (2), clearly shows that no non-Muslim is required to go there for litigation. Moreover, their jurisdiction is limited to only a small area of civil maters-Personal Status-which does not necessarily affect non-Muslims. One cannot see how Islam can be imposed on the nation through these courts.

Despite the identification of the Common Law with Christianity, no one has suggested that Nigeria has become a Christian state by virtue of it adopting that law. In spite of all that had been said to the effect of dissociating the origin of the Common Law from Christianity, it is known on authority that the Common Law "came into existence along side the cathedrals, abbeys and parish churches which were built in the 11th and 12th centuries," and that it was "formulated by judges who were often prelates of the church……" it is also known on authority that "in contrast with the Imperial Roman Law, the Common Law of England is animated by Christian principles and ideals" The New Universal Library, article "Common Law").

Every year, the Assizes and the legal year are opened with church services. These are clear indications of the Christian orientation of the Common Law.

Besides, the Christian Sabbath is officially observed by all and sundry irrespective of faith. No one has openly challenged this practice as an imposition of a Christian doctrine on the nation. In view of the points made above, it is unfair and indeed mischievous to construe the *Shari'ah* provisions in the Draft as an attempt to Islamize this nation.

Dual Legal System?

Some other compatriots have condemned the said provisions as an introduction of a dual legal system. But British which gave us the Common Law has, alongside the English Law, the Scots Law whose origin and development

differ from those of English Law. After the union of England and Scotland in 1707 many matters of the Scots relating to property, contract, tort and succession continued to be dealt with according to the principles of the Scots Law. Accordingly, Scotland has her own system of Courts quite separate from, and independent of the English courts with the House of Lords as its final Court of Appeal. And all that is inspite of the unitary nature of the United Kingdom. (The New Universal Library, Article "Scots Law").

If a unitary political system such as that of the United Kingdom could make such adequate provisions for another legal system alongside the English legal system, a Federal System such as ours is more deserving of such a provision. Those protagonists of the Common Law who do not want any other legal system to exist alongside it are only being less tolerant than those who gave them the Common Law.

It will be recalled as already noted, that the Common Law and the *Shari'ah* have existed side by side in this country for about 80 years, and there has been no confusion. So, the 'fear' of 'confusion' in our legal system which some critics have expressed is not only imaginary but indeed hypocritical; it is neither real nor genuine.

Exceptions

Exceptions to certain provisions of the draft made in favour of Islamic Law and Customary Law have also been wrongly seen as giving these laws a preferential treatment. Ours is not the first of such document to grant such exceptions. The Mormons, a religious sect in the United States are permitted to practice polygamy even though bigamy is a crime in that country as far as other citizens of the U.S. are concerned. In fact polygamy was universal among the Mormons until 1890. (The New Universal Library, Article "Mormons"). Similarly, the Jews and Muslims of the United Kingdom are permitted to slaughter animals in accordance with Rabbinical and Islamic Laws respectively.

Muslim Sects?

In their desperate but misguided efforts to show that Islamic Law is not unified, some compatriots ignorantly claim that such organizations as the Ansar-

Ud-Deen, and the Ahmadiyyah and such *Sufi* orders as the Tijaniyyah and the Qadriyyah are 'sects' having their own laws. What a display of ignorance'. They are not 'sects' but organisations such as the Young Men Christian Association and the Christian Fellowship. Despite the differences between the main body of Muslims and the Ahmadiyyah, the latter does not have a separate law. And if the orders of Saints John, Michael etc. are not sects in Christianity, then the Tijaniyyah and the Qadiriyyah orders should not be seen as sects but as mystical brotherhoods. The *Shari'ah* is one. The minor differences between the schools which are not doctrinal are taken care of by the principle known as *takhayyur* and *talfiq*.

Litigations between Muslims and Non-Muslims:

This does not constitute a problem. Islam does not impose its law on non-Muslims and the jurisdiction of the *Shari'ah* Courts in the Draft conforms to that principle. A Muslim involved in litigation with a non-Muslim cannot drag the latter to a *Shari'ah* Court. The Muslim is bound to go to a customary court or a magistrate court as they may agree to go by mutual consent. Assuming that such a case could arise, though the jurisdiction of the *Shari'ah* Courts as spelt out in the Draft confines its application to Muslims, it cannot be used as a reason to deny Muslim litigants access to the *Shari'ah.*

Not Peculiar to Nigeria:

Nigeria is not the only secular state even in Africa South of the Sahara that accommodates the *Shari'ah.* There are three grades of *Shari'ah* courts in Kenya: Liwalis Courts, Qadis Courts and Mudirs Courts. *Shari'ah* Courts are found in Tanzania (both on the Island of Zanzibar and on the mainland). They are also found in Ethiopia (as Qadi and Niyaba Courts), Uganda and the Gambia (Anderson, *Islamic Law in Africa*, pp. 58, 59, 88, 89; Patrick Gilkes, *The Dying Lion: Feudalism and Modernization In Ethiopia*: London, Julian Friedman Publisher Ltd., 1975, p.223). There are *Shari'ah* Courts in Sir Lanka even though the Muslims of that country constitute only 8% of the population. The Muslims of the United Kingdom are now agitating for the establishment of Islamic Law courts in that country, and they may eventually get them. The place given to *Shari'ah* in the legal system of those countries has not made them Islamic States. Similarly, the

Coptic Christians of Egypt who account for less than 7% of the population of that country enjoy the facilities of Coptic Communal Courts and a Coptic Communal Court of Appeal. Yet, Egypt is not a Coptic State.

Conclusion:

The foregoing review, we believe, should convince any patriotic Nigerian of the need to provide for *Shari'ah* Courts in the Nigerian Constitution in making. Not only is the establishment of a Federal *Shari'ah* Court of Appeal called for, the provision of *Shari'ah* courts of first instance and State *Shari'ah* Courts of Appeal in those States where they do not exist at present is also necessary. It is the unalienable right of the Muslims of this country to have access to *Shari'ah* Courts wherever they may be in the Federation, and they deserve to be given opportunity of appeal to an appropriate court at the Federal level. Non-Muslim compatriots should not see this as a preferential treatment of Muslims for there are several indications of the Christians orientation of some national institutions in this country; unless we lean to give and take the consequences of intolerance can be more dangerous than we can imagine. Let us take caution.

Honourable Members of the Constituent Assembly, that is our submission.

May God guide you aright in your deliberations.

Long live the unity of the Federal Republic of Nigeria.

Signed	Signed
Mr. Dawud Olatokunbo Shittu	**Dr. Sayed 'Tunde Malik**

AAE/DOS & STM Wednesday, February 8, 1978

APPENDIX II

MEMORANDUM TO OSUN STATE HOUSE OF ASSEMBLY ON THE REVIEW OF 1999 CONSTITUTION

BY

THE LEAGUE OF IMAMS AND ALFAS

ON BEHALF OF THE MUSLIM COMMUNITY OF OSUN STATE

DECEMBER, 1999

IN THE NAME OF ALLAH, THE BENEFICENT, THE MERCIFUL.

Preamble:

We want to first of all thank the Honourable Speaker of Osun State House of Assembly and all other Members of the House for recognizing us and for extending hands of fellowship to us in the bid of reviewing the 1999 Constitution.

It is really a good gesture at this period when democratic rule is getting its footing in the political renaissance of this country. It becomes a commendable effort therefore if the 1999 Constitution could be critically appraised with a view to making amendments where necessary.

Being a religious group, our concern has been focused towards religious matters in the constitution with the belief that other matters will be the focus of attention of other interest groups. Nigeria, as a multi-religious state, needs to cater for various religious interests in the constitution so that a religious group will not be unduely made to suffer in carrying out its religious fundamental rights.

In view of the above, the issue of *Shari'ah* becomes our focus of attention in this memorandum. This is so because *Shari'ah* is to a Muslim like soul to a body. When soul is separated from a body, the body becomes useless; likewise, when *Shari'ah* is taken away from a Muslim; he becomes useless and hopeless religious-wise. *Shari'ah* is the guide for a Muslim to conduct his life in harmony with the Divine will; hence the constitutional provision of *Shari'ah* for the Muslims regardless of wherever they might belong, whether North or South, East or West of this country needs to be reviewed.

Significance of *Shari'ah* to the Muslims

Attempt is made here to briefly appraise the importance of *Shari'ah* to the Muslims so as to give ourselves in-depth knowledge on why the Muslims agitate for *Shari'ah.*

Shari'ah is the way of life of the Muslims. It is the embodiment of all aspects of their life, both spiritual and mundane. This is because Islam is not just a set of rituals but a complete way of life. Defining religion to a Muslim, Professor Sayyed Hossein Nasr asserts, "religion to a Muslim is essentially the divine law which includes not only universal moral principles but details of how man should conduct his life and deal with his neighbour and with God; how he should eat, procreate and sleep; how he should buy and sell at the market place; how he should pray and perform other acts of worship. It includes all aspects of human life and contains in its tenets the guide for a Muslim to conduct his life in harmony with the Divine will." (*Ideals and Realities of Islam,* London: George Allen and Unwin (publishers) Ltd., 1979, pp. 95 & 96).

As a matter of fact, even non-Muslim scholars of Islamic law admit this empirical truth. For example, Professor Joseph Schacht despite his prejudices against Islam, declares that "Shari'ah is the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself." (*An introduction to Islamic Law*, London: Oxford University Press, 1964, p.1). Similarly, Professor J.N.D. Anderson sees the *Shari'ah* as explicit and assured in its enunciation of the quality of life which God required of man and woman ("The Legal Tradition" in J. Kritzeck and W.H. Lewis (ed), *Islam in Africa*, New york 1969, p.35).

Analysing the significance of *Shari'ah* to the Muslims, Professor Nasr observes: "the *Shari'ah* contains the injunctions of the Divine Law as applied to every situation in life. It is the Law according to which God wants a Muslim to live. It is therefore the guide of human action and encompasses every facet of human life. By living according to the *Shari'ah* man places his whole existence in God's hand. The *Shari'ah* by considering every aspect of human action thus sanctifies the whole of life and gives a religious significance to what may appear as the most mundane of activities" (*Ideals and Realities of Islam*, *op.cit*, p. 94).

The application of *Shari'ah* by the Muslims becomes more significant when in many places of the Qur'an, they are challenged and informed to make use of Allah's laws in their affairs. The Qur'an enjoins the Prophet and all Muslims

thus. "…… Judge, therefore, between them by what Allah has revealed and follow not their evil inclinations, turning away from the truth which has come to thee ……" (Qur'an 5:49). The Qur'an also warns" …… and whosoever judges not by what Allah has revealed, these it is who are the wrongdoers" (Q. 5:45). This warning is repeated again and again in chapter 5 verses 46 and 48.

One important fact that needs to be stressed here is that *Shari'ah* is Islam and Islam is *Shari'ah,* hence *Shari'ah* cannot be separated from the Muslims. It is to them as their soul to the body. Any attempt to dissuade them or deny tem from the use of *Shari'ah* means denying them from practicing Islam, their religion. This therefore implies infringing on their fundamental human right to the freedom of worship, which is a *sine qua non* in our constitution.

Historical Antecedents of *Shari'ah*

The history of *Shari'ah* in Nigeria is as old as the history of Islam, since *Shari'ah* is Islam and Islam is *Shari'ah.* Wherever Islam spreads, it goes along with its system of law. Therefore, the advent of *Shari'ah* dates back far beyond the beginning of the 19th century when it was only given a strong official recognition and organized by the Sokoto Jihadists. By the beginning of that century, the *Shari'ah* completely replaced whatever was left of the pagan legal practices in parts of the areas now known as the Northern States. At that time and until the British came, it was applied in all its ramifications – civil and criminal. But the British super-imposed the English law on it and progressively confined its jurisdiction to the Muslim Personal matters.

Even in Yorubaland, Islam and *Shari'ah* had a firm footing before the advent of the British colonialists. It has been established that Islam and *Shari'ah* entered Yorubaland through the North. Although, the exact date of their entry is not known, there had been evidence of Islamic presence in Yorubaland in the 17th century. Justice Muri Okunola asserts that by the time of colonial era between 1860 and 1894, the *Shari'ah* had been firmly established in some towns. Some of these towns are:

a. Iwo: where the chiefs and the people of the town, led by Oba Momodu Lamuye, who was enthroned in 1860, were Muslims. *Shari'ah* was the law applied in his domain and the administration of the town was done in line with Islam till he died in 1906.

b. Ikirun: where Oba Oyewole, reigning here at that time accepted Islam and established the *Shari'ah* Court in his domain presided over by one Bako from Ilorin as Kadi.

c. Ede: where Oba Habibu Olagunju, reigning at this time also established the *Shari'ah* Court in Ede in area called Agbeni. The Court was removed in 1914, to another area called Agbongbe and the first Kadi was one Sindiku ("The Relevance of *Shari'ah* to Nigeria" in Professor Nura Alkali & Co. (ed), *Islam in Africa*, Lagos: Spectrum Books Ltd., 1993, pp. 24 & 25).

Moreover, Professor A.R.I. Doi observes that there is enough evidence to show that there had been tremendous influence of *Shari'ah* in the life style and religious activities of the Yoruba Muslims. There are expressions such as "*O da seria fun-un"* (he meted out to him the punishment he deserved according to *Shari'ah*. *"O to suna"* (It is legally right or it is in line with the *Sunnah* of the Prophet Muhammad 'S.W.A.'). These and many other legal expressions are often used by the average Yoruba, be he a Muslim, Christian or Traditional Worshiper. (*Islam in Nigeria*, Zaria: Gaskiya Corporation Ltd., 1984, p 213). Professor D.O.S. Noibi even corroborates this fact when he declares that the Alikali families that are found in various parts of Yorubaland are the off spring of *Shari'ah* Court judges. He states further that although the British contrived and abolished the *Shari'ah* in Yorubaland, Muslims in places like Lagos, Ijebu-ode, Ibadan, etc., did at different times in the past, call for the revival of the Law for the purpose of adjudication among Muslims. (*Islamic Perspectives*, Ijebu-Ode: Shebiotimo Publication, 1988, p.52).

Shari'ah **and other Systems of Law**

As already mentioned, *Shari'ah* predates the English law known as Common Law in Nigeria. With the introduction of Common Law by the British in this country, *Shari'ah* co-existed with it for more than 80 years without any confusion. It is highly unfortunate that some critics are strongly criticising *Shari'ah* and have threatened the fall of heaven and earth as a result of the declaration of application of *Shari'ah* by a State in the Country.

Some antagonists of *Shari'ah* claim that Nigeria is a secular state and as a result, no religion should be declared as a state religion and that no other law

should be allowed to function along Common Law. In the first place, we want to debunk the idea that Nigeria is a secular state. Nigeria is never a secular state but a multi-religious state, for secularism means a system that has nothing to do with God and this is not so in the Nigerian context. Secondly, introduction of *Shari'ah* by any state does not mean declaring Islam a state religion, it only means allowing the Muslims of that State to make use of their religious laws in their activities since our constitution makes room for right to freedom of thought, conscience and religion (section 38 of 1999 Constitution).

The issue that if *Shari'ah* is allowed, it will mean allowing a dual legal system is a non-issue, for this dual legal system is not peculiar to Nigeria. For example, British which gave us the Common Law has, alongside the English Law, allowed the Scots law whose origin and development differ from, those of English Law. After the union of England and Scotland in 1707 many matters of Scots relating to property, contract, tort and succession continued to be dealt with according to the principles of the Scots law. Accordingly, Scotland has her own system of courts quite separate from, and independent of the English courts with the House of Lords as its final court of Appeal. And all that is allowed in spite of the United Kingdom. (The New Universal Library, Article "Scot Law").

If a unitary political system such as that of the United Kingdom could make such adequate provisions for another legal system alongside the English legal system, a Federal system such as ours is more deserving of such a provision. It is therefore concluded that those who claim that *Shari'ah* should not co-exist with the Common Law are only being less tolerant or do so out of mere ignorance or hatred for Islam or both. As earlier mentioned, the Common Law and the *Shari'ah* have existed side by side in this country for over 80 years, and there has been no confusion. So, the 'fear' of 'confusion' in our legal system which some critics have expressed is not only imaginary but indeed hypocritical; it is neither real nor genuine.

It is highly mischievous to claim that establishment of *Shari'ah* is an attempt to make Islam a state religion when in an actual fact the Common law is neo-Christianity. Despite the identification of the Common Law with Christianity, no Muslim has said that Nigeria has become a Christian state by virtue of it adopting the Law. In spite of all that had been said to the effect of dissociating the origin of the Common law from Christianity, it is known on authority that the

Common law "came into existence alongside the cathedrals, abbeys and parish churches which were built in the 11th and 12th centuries" and that it was "formulated by judges who were often prelates of their church ……". It is also known on authority that in contact with the imperial Roman Law, the Common Law of England is animated by Christian principles and ideas" (The New Universal library, article "Common Law").

Moreso, the Christian Sabbath and Sunday are officially observed by all and sundry as work-free days irrespective of faith while Friday is never free. The academic gown used in our tertiary institutions as well as the titles of their headship viz rector, provost and chancellor are all Christian oriented practices coined from the church and imposed on all Nigerian Students regardless of their faith. Similarly, cross, which is the symbol of Christianity, is used as medical sign. This goes contrary to the belief of the Muslims, yet no one has openly challenged these practices as an imposition of a Christian doctrine on the nation.

In view of the points made above, it is unfair and indeed mischievous to say that establishment or introduction of *Shari'ah* in any part of this country is an attempt to Islamise the Country.

Shari'ah **and the Non-Muslims**

The fear of the non-Muslims about what will be their fate if *Shari'ah* is introduced in any part of this country and which has prompted attack and canter attack against it needs to be allayed. Non-Muslims need to be informed that *Shari'ah* makes adequate provisions for them.

It is to be noted that even the non-Muslims who live in a complete Islamic state (e.g. Saudi Arabia) enjoy all their human rights under *Shari'ah.* They are regarded as *Ahl–al–Dhimmah* or *Dhimmis* – the covenanted people. This implies those that will be guaranteed the protection of their life, property and honour exactly like that of a Muslim. The rights given to a *Dhimmi* are of irrevocable nature. These fundamental rights extend to protection as well as freedom of worship. The issue of freedom of worship is addressed in Chapter 2 verse 256 of the Qur'an thus: "There is no compulsion in religion". This is even spoken of in a more clear term in Qur'an 109 verse 6: "To you be your religion and to me mine."

Based on the above Qur'anic injunctions, no Muslim will ever force any non-Muslim to apply *Shari'ah*. The *Shari'ah* is meant for the Muslims only and its

application will never be extended to the non-Muslim in any where it is introduced. Where there are litigations between Muslims and non-Muslims, such litigations will have to be taken to either the Magistrate Court or Customary Court as they may agree on mutual consent. Although if a non-Muslim agrees that the litigation be decided in the *Shari'ah* courts, such litigation will be entertained.

Shari'ah and the 1999 Constitution

In sections 262 and 277 of the 1999 Constitution where the *Shari'ah* Court of Appeal of the Federal Capital Territory, Abuja and the *Shari'ah* Court of Appeal of a State are discussed respectively, it is observed that their jurisdiction is limited to civil proceedings involving question of Islamic personal law. This is where this memorandum seems to focus in the amendment of the Constitution.

Restricting the jurisdiction of the *Shari'ah* court to civil matters means denying the Muslims their fundamental human rights. It is to be noted that section 38 of our Constitution sates that "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 in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance". This therefore gives the Muslims the opportunity of operating their religious faith according to their religious laws and any attempt to limit the jurisdiction of the *Shari'ah* court to civil matters implies denying them the right to adjudicate on other matters of their religious interests.

Moreso, the scope of *Shari'ah* covers five aspects of human endeavour. These are *I'tiqadat* (beliefs of creeds), *Ibadat* (Devotions) *Adab* (Moralities), *Mu'amalat* (Transaction/civil Matters) and '*Uqubat* (Criminal Matters). It is unfortunate that even just a part of an aspect (*Muamalat*) out of the five is catered for by the 1999 constitution.

To make the life of the Muslims of this country more meaningful to them religious-wise, the jurisdiction of the *Shari'ah* court in our constitution needs to be extended to cover other aspects of their life. It is sinful according to Qur'anic injunction to make use of some parts of *Shari'ah* and neglect others. Qur'an 2 verse 85 declares: "then is it only a part of the Book that you believe in and do you reject the rest?"

In view of the above, we wish to state that the jurisdiction of the *Shari'ah* court needs to be amended to cover all scopes of *Shari'ah* so as not to deny the Muslims their fundamental human rights.

Shari'ah and Anti-Corruption Crusade

There is no iota of doubt that Nigerian Society has been characterized with corruption and immoral acts. Effort of President Olusegun Obasanjo to combat corruption in Nigeria through his anti-corruption crusade is highly commendable. It is however observed that the *Shari'ah* has addressed this extensively; hence it will be in the best interest of this country if *Shari'ah* approach is looked into and employed to combat corruption.

The first thing *Shari'ah* does in this regard is to create God-consciousness in everybody. When everybody believes that wherever he may be, he is seen by God and that he will stand before Him one day to account for his actions, he will be cautious in his actions. Secondly, the welfare of the populace is well taken care of, then penalties and punishments are awarded to whoever is found guilty of an offence to serve as deterrent to others. When this is done, the society becomes crime-free, peaceful and conductive for living.

As a result, it is our hope that if *Shari'ah* jurisdiction is extended to cover all scopes including the criminal matters, our society will not be so much in need of anti-corruption bill, at least from the Muslims end.

The need for _Shari'ah_ in Osun State

It will be recalled that mention has been made in this memorandum about the significance of *Shari'ah* to all Muslims and it is said that *Shari'ah* is Islam and Islam is *Shari'ah.* It is also stated that *Shari'ah* is to the Muslims as soul is to the body. Any attempt to separate one from the other means bringing an end to one.

Moreover, the history of *Shari'ah* in Yorubaland in the pre-colonial era cannot be complete if places like Iwo, Ede and Ikirun which are presently parts and parcels of Osun State are not mentioned. These towns had been identified as places where *Shari'ah* was fully applied before and even at the arrival of the British colonialists before it was later contrived and abolished.

Apart from the above, Muslims in any part of this country are entitled to their fundamental human right as provided by the section 38 of our Constitution.

Since Muslims of Osun State are also expected to enjoin this right as guaranteed by this section, it is justifiable to give them this right for the sake of justice and fair play.

It is disheartening to note that Muslims in Osun State consummate their marriages in accordance with *Shari'ah* injunctions but when situation brings about problem amongst the couple to be resolved in a court of law, they either go to the Magistrate or Customary Court for such. They are atimes separated without taking into consideration the requirements of divorce as stipulated by Islam. Such a situation whereby marriage is consummated in the Mosque and dissolved under a law that does not have Islamic background is a great embarrassment to the Muslims and is seen as denial of fundamental human right. It will therefore be ideal to establish *Shari'ah* Court for the Muslims of this State for them to adjudicate their matters according to the laws of their religion.

If customary court could be established in Osun State to adjudicate customary issues, similar opportunities should be given to *Shari'ah.* When customary courts apply laws, most of which emanated from religious beliefs of the community concerned, there is no reason why provision cannot be made for Muslims to get justice, especially in personal matters, in accordance with the laws of their religion.

The *Shari'ah* is constitutional right of all Nigerian Muslims; Osun State Muslims should not therefore be exemptional. It is as a result of this we want to call on the honourable members of Osun State House of Assembly to critically consider this with a view to establishing *Shari'ah* court in Osun State since section 275 of the 1999 Constitution allows this.

Conclusion

This memorandum has tried to address the issue of *Shari'ah* by stating its significance to the Muslims and allaying the fears of the non-Muslims. It therefore focuses majorly on:

a. The need for the amendment of the 1999 Constitution to extent the jurisdiction of *Shari'ah* to cover all its scopes rather than being limited to civil matters alone.
b. The need for introduction of *Shari'ah* in Osun State for the Muslims to have their constitutional right in this regard.

It is to be reiterated at this juncture that it is in the inalienable right of the Muslims of this country to have access to *Shari'ah* Courts wherever they may be. The non-Muslims should therefore not see it as a preferential treatment of Muslims for there are several indications of Christian orientation of some national institutions in this country; unless we learn to give and take, the consequences of intolerance can be more dangerous than we can imagine. The issue of *Shari'ah* is that of the Muslims alone, it does not concern the non-Muslims in all ramifications.

Long live the Federal Republic of Nigeria.

Long live Osun State.

Signed

ALH. SHAYKH MUSTAFA AJISAFE

Chief Imam of Osogboland and

Chairman, League of Imams and Alfas,

Osun State.

APPENDIX III

1976 MUSLIM PETITION FOR *SHARIA* COURTS ESPECIALLY IN OGUN, OYO AND ONDO STATES

At its meeting held on Saturday 7th February, 1976 at the Central Mosque, Ibadan, the National Joint Muslim Organisation of Nigeria (NAJOMO) comprising accredited representatives of the Muslims of Ogun, Ondo and Oyo States decided that the following resolution which was unanimously carried at the meeting be forwarded to your committee for consideration:

> "Whereas the *Shari'a* (i.e. Islamic Law) has a binding authority on every Muslim who must follow and employ it to resolve his affairs.
>
> "Whereas in Nigeria the application of the *Shari'a* by *Shari'a* Courts for historical reasons rooted in the British Colonial policy of treating the Southern parts of the country as a Christian domain, has been confined to the Northern parts of the country.
>
> "Whereas now that the country has attained full statehood and is now determined to device a constitution which would meet the political, religious and cultural aspirations of all the people making up the new Nigerian Nation,
>
> "Whereas the Muslims in the Southern parts specially those in Ogun, Ondo and Oyo States do not desire to be treated as Muslims for some purposes and as non-Muslims for others,
>
> "Whereas the *Shari'a* (Islamic Law) is recognised in its own right as one of the world's civilized systems of laws,
>
> "And whereas the Muslims do not recognize that freedom of religion is truly observed in this country unless the Muslims enjoy full freedom of worship as well as freedom to regulate their affairs *inter se* according to the teachings and practices of their faith.

"Be it resolved that it is hereby resolved by the National Joint Muslim Organisation representing the Muslims of Ogun, Ondo and Oyo States of Nigeria that the Constitution Drafting Committee of the Federal Republic of Nigeria should include in the proposed Constitution provisions:

i. that would enable any group of Muslims anywhere in Nigeria to regulate their affairs by their religious law (the *Shari'a*) and

ii. that *Shari'a* courts be established in Ogun, Oyo and Ondo States in such numbers as the Muslim population in the respective states warrants.

2. The above resolution has been adopted after a most careful deliberation and in response to the yearnings of the Muslims in Ogun, Ondo and Oyo States who constitute respectively 52%, 12.3%, and 52% of the populations of each of the three states. (See Apendix for a breakdown of the 1963 Population Figures). Even in Ondo where the Muslims form a minority, their spirit is very high and in recent years they have made great inroads in the areas some regarded as a Christian preserve.

3. The Muslims have waited till now to make their feelings known on this matter because this is the first time in the constitutional history of Nigeria that the totality of the citizenry is being involved in the making of the constitution. Howbeit, reference may be made to the demand made in July 1894 by the Lagos Muslims (who at that time usually spoke for the Muslims of Lagos Island and Yorubaland). The Lagos Muslims petitioned the government in that year that they be ruled and judged in regard to their civil rights and grievances according to the Islamic system of law and justice. They unequivocally resolved that they should be made subject henceforth to Islamic Law and Custom.

4. To buttress the demand herein made, reference may be made to the Holy Qur'an which is the main source of Islamic Law and practice and which has enjoined as follows:

i. "He (Allah) has sent the Qur'an in truth to judge between people in matters wherein they differed."

Chapter 2, verse 213

ii. "O ye who believe, obey Allah and obey the Apostle and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Apostle, if ye do believe in Allah and the Last Day: that is best and most suitable for final determination."

Chapter 4, verses 50-60

iii. "And this He (Allah) commands: judge thou between them by what Allah hath revealed, and follow not their vain desires, but beware of them lest they beguile thee from any of what teaching which Allah has sent down to thee."

Chapter 5, verse 52

More citations can be made *ad infinitum*. But so compelling is the requirement of the observance of Islamic Law that the Qur'an emphatically castigates non-compliance as transgression and even disbelief. To wit, three verses in *Sura Maida* i.e. Chapter 5, declare thus:

iv. "Therefore fear not man but fear Me and sell not my signs for a miserable price. If any do fail to judge by the light of what Allah hath revealed they are the unbelievers" (verse 47).

v. "If any do fail to judge by the Light of what Allah hath revealed, they are wrong doers" (verse 48).

vi. "If any do fail to judge by the Light of what Allah has revealed, they are the transgressors" (verse 50).

.

5. We end by praying that Allah may strengthen the Committee in acceding to our request, and guide it in devising the right constitution for the country.

Signed	**Signed**
Alhaji Muili Abdulai	Dr. Lateef Adegbite
President General of NAJOMO	Chairman, NAJOMO
& Chief Imam of Ibadan	

Signed	**Signed**	**Signed**
Alhaji Arimi Noibi	Alhaji A.S. Akinwande	Alhaji Sadiku Aliyu Popo
Chief Imam of Ijebu-Ode	Chief Imam of Ondo	Mufti of NAJOMO
Representing Ogun State	Representing Ondo State	Representing Oyo State

APPENDIX IV

THE PRIVATE BILL PRESENTED TO OYO STATE HOUSE OF ASSEMBLY DURING THE REGIME OF ALHAJI LAM ADESINA BY A MUSLIM GROUP TITLED:

ISLAMIC PERSONAL LAW BILL

TABLE OF CONTENTS

1. PREAMBLE/ENACTENT

WHEREAS the 1999 constitution was enacted "for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice, and for the purpose of

consolidating the unity of our people".

And whereas fundamental Human Rights established in the constitution guarantees among others, the right to fair hearing in the determination of civil rights in "a court established by law and constituted in such a manner as to secure its independence and impartiality" (Section 36 (1)).

Whereas section 4(6) of the constitution vested the legislative power of a State of the Federation in the House of Assembly of the State;

Whereas section 6(2) of the constitution vested judicial powers of a state in the courts constitutionally established;

Whereas section B of the second schedule to the customary court of Oyo State empowers the court to have unlimited jurisdiction in matrimonial matters and causes between persons married under customary law or arising from or connected with a union contracted under customary law;

Whereas section 6(4) and (a) permits the House of Assembly to establish other courts with subordinate jurisdiction to that of a high court;

Whereas by the provision of section 6(5) (C), such other courts may be established and authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which House of Assembly may make laws;

And whereas section 275 (1) of the country's constitution specifically grants the establishment of Sharia Court of Appeal for any willing State;

And whereas section 1(i) asserts that the constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria;

And whereas the State desires to establish Islamic Personal Law Courts i.e. (i) Sharia Courts and (ii) Sharia Court of Appeal with jurisdiction in civil proceedings involving questions of Islamic personal laws as stated in section 277 (1) (2) (a) (b) (c) (d) and (e) of the 1999 constitution of the Federal Republic of Nigeria;

Now therefore be it enacted by the House of Assembly of Oyo State as follows:

PART I

PRELIMINARY/DEFINITION

SHORT TITLE: THIS BILL may be cited as ISLAMIC PERSONAL LAW BILL

DATE OF COMMENCEMENT: It shall come into operation on …… day of ……

DEFINITION:

Holy Qur'an - means the divine scripture revealed to Prophet Muhammad (S.A.W.) by the Almighty God and universally acknowledged as the fundamental code for the Muslims' way of life.

Hadith - means and shall include authentic sayings and teachings of the Holy Prophet Muhammad (S.A.W.) as narrated by his companions.

"Sunnah" - means and shall include the doings and practices of the Holy Prophet Muhammad as narrated by his companions.

Ijmah - means and shall include consensus of opinions of renown and celebrated Islamic jurists and scholars (*mujtahids*) on principles, concepts and issues of Islamic law.

Islamic law - means and shall include knowledge in the theory and practice of Islamic Law as prescribed by the Qur'an, *Hadith*, *Qiyas*, *Ijmah* and other sources of Islamic law relevant to issues within which the Sharia Courts are empowered.

Qiyas - means and shall include analogical deductions in Islamic law, act, thing or conduct which is relevant, equitable or beneficial to the way of life that is not contrary to the provisions of any other sources of Islamic law.

Istihsan - means and shall include any practice which is neither specifically prohibited nor allowed.

Other sources of Islamic law - means and shall include *Mursalah*, *Istihsan*, *Al-urf Mashabul*, *Sahabi*, and *Shar'u Man kablana*

Masalahab-Mursalah - means any relevant and useful; act or thing on which no guidance can be found in the other sources of Islamic law.

Al-urf - means and shall include any way of life of a people which is not prohibited by any of the other sources of Islamic law or contrary to it.

Cause - means and shall include any action, suit or original proceeding that falls within the jurisdiction of the court.

Matter - means and shall include any proceeding of the court not in a cause.

Companions - means and shall include all those Muslims who had the privilege of direct dealings with the Prophet in his ministry.

Mazhabul Sahbi - means and shall include the opinions of the close companions of the Prophet Muhammad (S.A.W.).

Person - means and shall include any competent party that is before a Sharia whether as individual, individuals body or authority.

Sharia Law - means and shall include the Islamic legal system or Islamic law as prescribed by the holy Qur'an, *Hadith* and *Sunnah* of the Holy Prophet Muhammad (S.A.W.), *Ijmah*, *Qiyas* relevant laws passed by the House of Assembly and other sources of Islamic law on matters within the jurisdiction of the Sharia Court.

Sharia Courts - means and shall include the courts established under this bill to administer Islamic law on the specified matters within its jurisdiction.

Kadi - means and shall include a person who under the provisions of this bill is qualified to be appointed as a judge of the Sharia Court and is so appointed.

Grand Kadi - means and shall include the head of the panel of *Al-kalis* sitting on the Sharia Court of appeal.

Joint Aid Monitoring Group - means and shall include any member of group appointed to monitor the application of Islamic law on matters within the jurisdiction of Sharia Courts.

Judicial Service Commission - means the commission established for the State under S197 {I} ccl and empowered under paragraph 6 (c) of part II to the 3rd schedule of the constitution.

PART II

ESTABLISHMENT AND CONSTITUTIONS OF COURTS FOR ISLAMIC PERSONAL LAWS

(3) (i) There are hereby established in the state the following courts

a. Sharia Court

b. Sharia Court of Appeal

(ii) The Sharia Court shall be established in each local government area. The number of such Courts shall vary according to the needs in each local government area.

(iii) The Sharia Court of Appeal shall be established in the state capital.

(iv) Only the governor shall have power to issue a warrant for the establishment of a Sharia Court of Appeal.

(v) The jurisdiction of the Sharia Courts shall be as conferred upon it by or under this law and shall be exercised within such area and to such extent as may be specified in the enabling warrant establishing the Court. The commencement of the enabling warrant shall be as specified therein.

(vi) The enabling warrant referred to in 3 (iv) and (v) above may be suspended, cancelled or varied by the Governor through recommendation of the Advisory Judicial Committee to suit the requirement of the state.

Constitution 4

(i) A Sharia Court shall be properly constituted if presided over by a single *Kadi.*

(ii) Sharia Court of Appeal sitting to determine appeals shall have a grand Kadi and at least one *kadi* and the Court's decisions shall be by concurrence of all the *Kadis*, failing concurrence, an additional *Kadi* shall be appointed to sit with them and majority decision shall be the decision of the court.

PART III

LAW PRACTICE AND PROCEDURE

Applicable laws and rules of procedures 5 (I) The applicable laws and rules of procedure for the hearing and determination of all and proceedings before the Sharia Courts shall be as prescribed under Islamic law which include:

a. The Holy Qur'an
b. The *Hadith* and *Sunnah* of Prophet Muhammad (S.A.W)
c. *Ijmah*
d. *Qiyas*
e. *Masalaha*
f. *Istishab*
g. *Istihsan*
h. *Al-urf*
i. *Mashabul-shabi*; and
j. *Shar'u Man Kablana*

Practice and Procedure: (ii) The state chief judge in consultation with the state council of *Ulamas*, have power to make rules and regulations for the practice and procedure of the Sharia Courts; without prejudice to the dictates of Islam.

Sitting in public space: (iii) A Sharia Court with the original or appellate jurisdiction shall normally sit in public place.

Exclusion of the public: (iv) Provision may be made by rules of court for the exclusion of the public from the Sharia Court proceedings of:

a. Where in the court's view it will be necessary to exclude members of the public in the interest of justice;
b. Juvenile persons under Sharia law are involved.

PART IV

APPEALS 6

I. The Sharia Court of Appeal shall have the jurisdiction and power to hear and determine all Appeals from the decisions or orders of the Sharia Court in addition to other powers as may be given to it by the constitution and other authoritative legislative bodies.

II. Leave to appeal out of time to the appellate court may be given upon such terms as the Appeal Court shall deem just.

The Appeal Court (III) shall have the power to inspect the relevant records or books of such Sharia Court from which decision or an order of appeal lies.

PART V

JURISDICTION OR SHARIA COURTS

Jurisdiction: 7(I) The courts shall derive their jurisdiction from section 277(1) (2) (a) (b) (c) (d) and (e) of the 1999 constitution of the Federal Republic of Nigeria and other relevant provisions in the constitution vesting exclusive jurisdiction in any court of tribunal.

Proceeding: (II) The courts shall have jurisdiction and power to hear and determine civil proceedings in Islamic law in which the existence or extent a legal right, power, duty, liability, privilege, interest, obligation or claim ue to an individual or individuals) is in issue or to give an opinion on any estion of Islamic jurisprudence.

Person (III) The Sharia Courts shall, subject to the provisions of this law, have risdiction and power over the following persons:

a. All persons professing the Islamic faith; and

b. Any other persons who do not profess the Islamic faith but who voluntarily consent to the exercise of the jurisdiction of the Sharia Courts under this law;

c. In exercising jurisdiction over any person as stated in 7(iii)b above the Sharia Court *Kadi* shall ensure that the consent so given was voluntary and the person is legally competent and responsible to give it, and shall record the consent given in the proceedings.

d. The Sharia Courts shall have jurisdiction to hear and determine all civil causes or matters properly brought before the courts under this law by any person; provided such causes or matters shall be founded in Islamic law.

Sitting on Appeal 7(iv)

If at any stage of the proceedings and before final judgment in any cause or matter before a Sharia Court a person disputes that he is not subject to the jurisdiction of the Sharia Court such person shall upon application to the High Court of the State, have the proceedings transferred to the High Court which shall inquire into and determine the correctness of the allegation.

The applicant under subsection of this law shall give notice of his application to the High Court and the notice shall serve as stay of the processing before the Sharia Court pending the determination by the High Court.

PART VI

STATE COUNCIL OF ULAMAS 8

ESTABLISHMENT 7(I): There shall be established a council to be known as the State Council of *Ulamas* by the State Governor.

(II) It shall be the responsibility of the council to see to the screening, recommendation and advising on the qualification competence and fitness of any person both in character and learning, to be appointed as a *Kadi* under this law.

(III) The State Council of *Ulamas* may subject to sec. 12(I) of the law prescribe the guidelines, conditions and terms of appointment of a Sharia Court *Kadi* under this law to the appointing authority or body.

MEMBERSHIP AND QUALIFICATION 9

(I) The council shall comprise not less than 9 official representatives from the various Islamic Leaders of Thought in the state e.g. League of Imams and Alfas, The Islamic Propagators, Ansarudeen, Hamadiya, Hausa Community, Nacomyo etc. plus not more than 6 members appointed by the Governor. At least 3 of the members appointed by the Governor shall come from outside Oyo State. Provided that nothing in this section shall be

construed to preclude a member or members of the council from outside the Federal Republic of Nigeria.

(II) The members of the State Council of *Ulamas* shall elect the leader of council from among themselves subject to the approval of the Governor who will subsequently appoint them for a period of time.

(III) The State Council of Ulamas shall make rules and regulations for the conduct of the affairs of the council.

(IV) The State Council of Ulamas may coopt any person to attend its meeting and whose advise or opinion is required in its deliberation over any matter before it.

MEETING AND QUORUM 10

I. The council shall meet at least once in 3 months or as the occasion may require.

II. The quorum of the council on any meeting to discuss any matter shall be two third of the total number of the members of the council or by simple majority where the members present and voting are not less than two third of all the members of the council.

III. The council shall forward its decisions, recommendations, opinions or advice to the appropriate authority at the conclusion of its meeting for implementation.

IV. The Governor shall appoint a person learned in Islamic law to be the secretary of the council.

Remuneration of members of council: 10

I. The remuneration and allowance of the council members shall be determined by the governor from time to time.

Function of the council 11: The functions of the council shall include:

a. Periodical meetings to discuss, interpret, explain or give informed opinion on issues, matters or questions that may be referred to it by any person group of persons or authority or Sharia courts in respect of questions or issues in Islamic law and jurisprudenc generally;

b. To supervise the Sharia Court operations and to advise the appropriate authority on their performances whenever necessary;

c. To support the government in its task of promoting peace and welfare of the people;

d. To advise, select and recommend for suitable and qualified persons to be appointed as Kadis.

e. To advice subject to section 12 of this law and make recommendations for the discipline, suspension, termination, interdiction or dismissal of Shar'a Court Kadis or any other to the appropriate authority, body or person responsible for such disciplinary measures.

f. The council may subject to the provisions of this law, have power to codify all the relevant Islamic personal laws and where applicable their corresponding rewards for easy references;

g. The council may advise on the enactment of the rules of practice and procedure and evidence in the civil proceedings in Sharia Courts as prescribed in Islam.

PART VII

SHARIA COURT KADIS 12

I. The appointment, dismissal and disciplinary control over Sharia court Kadis, shall be ensured by the State Judicial Service Commission. Provided that nothing in this section shall preclude the State Council of *Ulamas* from screening, advising and recommending competent, qualified, fit and proper persons both in learning and in character to be appointed and for discipline as the case may be.

QUALIFICATION:

II Subject to and without prejudice to the provision of sub-section (i) of section 12 of this law, a person shall not be qualified to hold office as a Sharia Court Kadi under this law unless, in the opinion of the State Council of Ulamas, he has attended and has obtained a recognized qualification in Islamic law from an institution, approved by the council and has held the qualification for a period of not less than five years; and or in the opinion of

the Council of Uamas he either has:

a. Considerable experience in the knowledge of Islamic law or;
b. He is a distinctive scholar of Islamic law;
c. All Sharia Court Kadis so appointed shall be officers in the public service of the state;
d. No Sharia Court shall be liable for any act or omission attributable to or ordered by him to be done or omitted to be done in the discharge of his judicial duty and responsibilities whether or not within the limits of his jurisdiction provided that at the time of doing or omitting to do such act or omission he is in good faith believed himself to have jurisdiction to so act, omit to act or order to be done or omitted to be done the act or omission in question.

Disqualification:

e. A Sharia Court Kadi shall not be competent to sit in a matter either in its original or appellate jurisdiction, which he had previously tried or participated in whatsoever capacity whether personal, administrative or judicial.

Remuneration: (iii)

The Sharia Kadis shall be paid such remuneration and or allowances as may be determined by the State House of Assembly.

PART VIII

STAFF OF SHARIA COURTS 13

I. All staff of Sharia Courts shall be public officers in the public service of the State.
II. A registrar or clerk may be appointed to every Sharia Court and the registrar or clerk shall perform such duties in the execution of the powers and authorities of the court as may be assigned to him by rules of court or by any special order of the court and in particular he shall:
    a. Prepare for issuance of all warrants and writs;
    b. Assist the Sharia Court Kadi in recording proceedings of the Shariah Court which are not recorded by the Kadi or other members;

c. Register all orders and judgments of the Sharia Court;

d. Enter an account of all monies received or paid by the Sharia Court;

Delegation of Duties 14

A registrar or clerk may with the consent of the Kadi delegate any of the duties assigned to him to any official of the court subordinate to him.

Bailiffs and messengers 15

a. Bailiffs or messengers as may be required shall be appointed to every Sharia Court under the provisions of this law.

b. The duties of any person appointed under the provision of subsection (i) of section 12 of this law shall include:

   i. To effect the service and execution of all writs and other processes;

   ii. To make all necessary returns in relation to such writs and processes;

   iii. To carry out such other duties as may be prescribed by rules made under this law; and

   iv. At all times when he is not engaged on duties which necessitate his absence from the Sharia Court to attend the Sharia Court and obey all the lawful directions of the court.

c. A Sharia Court may authorize a police officer to perform all or any of the duties mentioned in subsection (b) in so far as they relate to any proceedings before the court including execution of the court orders and judgments;

d. Subject to the provisions of subsection (c) no other person than a duly appointed bailiff or messenger shall carry out or purport or attempt to carry any of the duties mentioned in (b).

No member of the staff of any Sharia Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this law shall be liable to be sued in any court for the performance of his lawful duties.

PART IX

OFFENCES 17

I. Any officer of the Sharia Court who willfully or by neglect or omission loses the opportunity of performing his duty shall be prosecuted by the state.

II. Nothing in this law shall be deemed to affect the powers and functions of High Court and Magistrate Courts in the exercise of their criminal and civil jurisdiction or any right or power in any officer or person to institute criminal or civil proceedings in those courts.

CONTROL OF SHARIA COURT 18

I. All Sharia Courts shall be subject to the general supervision and control of the office of the Chief Judge.

Appointment of inspectors: (II) The Chief Judge may appoint inspectors for the Sharia Court. Provided that nothing in this provision shall preclude the Council of Ulamas from screening the persons to be appointed before the appointment is made. Provided also that nothing in this section will preclude the council from screening the persons to the appropriate authority for any disciplinary action to be taken against an inspector.

APPENDIX V

THE REPORT OF ACTIVITIES OF OSUN STATE COMMITTEE ON *SHARI'AH* (OSCOS) SUBMITTED TO OSUN STATE MUSLIM COMMUNITY ON 21ST JULY, 2002

In the name of Allah, the Beneficent, the Merciful.

THE REPORT OF ACTIVITIES OF OSUN STATE COMMITTEE ON *SHARI'AH* (OSCOS)

01 **PREAMBLE**: The need to agitate for the implementation of *Shari'ah*, particularly the *Shari'ah* Court for Osun State was felt by some Muslim individuals of this state. This was a follow-up to a one day seminar on *Shari'ah* organized by NACOMYO, Osun State Chapter. As a result of this, a lot of brainstorming was made before it was resolved that a meeting of like-minds be called to discuss the issue. List of names of some Muslims from different callings, societies and backgrounds living, within or outside the state but who are indigenes of Osun State was compiled for the purpose of that meeting and a special invitation letters jointly signed by Alh. Abdul-Salaam Abbas and Alh. Abdul-Fatah Makinde were sent out.

02 **THE INAUGURAL MEETING:** The first meeting was held on Sunday 26th March, 2000 at NACOMYO Secretariat, Ola-ore Estate, Osogbo. The meeting was attended by eighteen people from different parts of the state. Alh. Abdul-Salaam Abbas and Alh. Abdul Fatah Makinde were made protein Chairman and Secretary of the committee respectively. The meeting deliberated on the purpose of the meeting and resolved thus:

(i) That *Shari'ah* Court of Appeal be demanded for in this state.

(ii) That some individual Muslims who would be useful in the struggle be identified from each Local Government Area and be invited to committee's meetings.

(iii) That some Muslim Scholars and Alfas who would be in support of our course be identified and carried along. Subsequently, a number of meetings were held by the committee to map out strategies. Upon all, seven meetings were held at the following days:

(a)	Sunday	26th March, 2000
(b)	Sunday	18th June, 2000
(c)	Sunday	20th August, 2000
(d)	Sunday	22nd October 2000
(e)	Sunday	21st January, 2001
(f)	Sunday	17th February, 2001
(g)	Sunday	27th May, 2001

03. **STRUCTURAL COMPOSITIONS:** Based on the resolutions reached at the inaugural meeting, the committee decided to make structural compositions of committee members and consultative forum. The committee members included all Muslim individuals invited from the Local Government Areas/Senatorial Zones of the State while the consultative forum included all identified Muslim Scholars and Alfas of like minds in the State invited by the Committee to the Consultative Forum.

The Consultative Forum was inaugurated on 7th May, 2000 at a meeting held at Nawar-u-deen Central Mosque, Osogbo with some invited Scholars and Alfas across the State. It was at this meeting that a sub-committee headed by Alh. Shaykh Salahudeen Olayiwola was set up to go round some eminent Chief Imams in the State to sensitize them about our plan and seek their support.

However, apart from the inaugural meeting of the consultative forum, two other meetings of the forum were held on 2nd July, 2000 and 3rd September, 2000.

04. **STRATEGY AND ACTION PLAN:** The action plan/strategy of the committee included the following:

(i) Sensitizing all Muslims in this state of the need to demand for *Shari'ah* Court for Osun State through the members of the committee drawn up from each Local Government Area.

(ii) Using the consultative forum as a link between the committee and the Imams in Osun State. The forum set up a sub-committee headed by Alh. Salahudeen Olayiwola who went to some eminent Chief Imams in the State on our mission and their report showed that they were favourably disposed to it and were ready to support the course any time it is moved.

(iii) Setting up a sub-technical committee comprising some Muslim lawyers and Islamic scholars to critically appraise the Constitution vis-a-vis *Shari'ah* issue and suggest ways through which the matter will be constitutionally tackled.

(iv) Carrying out contact with Muslim politicians who will be of assistance to our course and educating the Muslim Community on the need to participate fully in politics and vote for Muslims into the State House of Assembly where the issue of *Shari'ah* Court can be demanded for and passed into law according to the Nigerian Constitution.

05. **FINANCE**: In a bid to finance the committee's activities, fund was generated through donation and contribution from members. Each member was charged to contribute a sum of One Thousand Naira (₦1,000.00) each. While some members paid, some were unable to make it. From these two sources therefore a total amount of Seventeen Thousand, Four Hundred and Forty Naira (₦17,440.00) was realized as income while Sixteen thousand Nine Hundred Naira (₦16,900.00) was expended leaving the balance of Five Hundred and Fourty Naira (₦540.00).

06. **RECOMMENDATIONS/CONCLUSION:** The emergence of Osun State Muslim Community led to the suspension of the activities of this committee to allow for take over of the course by the Muslim community. In view of this, the committee wishes to make the following recommendations:

(i) That the Muslim community should take over the activities of the committee with a view to making its objective realizable.

(ii) Number (i) above not withstanding, the committee could be allowed to continue to function under the auspices of Osun State Muslim Community as a sub-committee of likely committees that may be set-up. However, membership may be reviewed as may be necessary.

(iii) All efforts should be intensified on the demand for *Shari'ah* Court in Osun State.

It is our hope that if all necessary machineries are put in place and Muslims of this state are well educated, enlightened and sensitized on the issue, our objective will sooner or later become achievable. May Allah help us on the course.

Signed	**Signed**
ALH. ABDUL-SALAAM ABBAS	ALH. ABDUL-FATAH MAKINDE
(Chairman)	*(Secretary)*

LIST OF MEMBERS OF THE COMMITTEE AND THEIR LOCAL GOVERNMENT AREAS

Abdul-Salaam Abbas	Ejigbo Local Govt.	Chairman
Alh. Abdul-Fatah Makinde	Osogo Local Govt.	Secretary
Alh. Mustafa Olawuyi	Ifelodun	Member
Alh. Abdul-Lateef Olayanju	Olorunda	Member
Alh. Musa Raji	Ola-Oluwa	Member
Alh. Hashim Olapade	Irewole	Member
Dr. H.I. Olagunju	Ede	Member
Engr. T.O. Adeyemo	Odo-Otin	Member
Mallam Gazali Ibrahim	Boluwaduro	Member
Alh. Raheem Zakariyau	Ila	Member
Barrister Raheem A. Adebisi	Ife South	Member
Dr. M.A. Hassan	Osogbo	Member
Alh. Abdul-Waheed K. Opoola	Boripe	Member
Alh. Yunus Ibrahim	Ifelodun	Member
Alh. Tayo Giwa	Iwo	Member
Alh. Zakariyau Sanusi	Egbedore	Member
Alh. Shittu K. Adefajo	Ilesa East	Member
Bro. S.A. Bello	Ila	Member
Alh. A.A. Olaniyan	Boripe	Member
Alh. Kola Uzamot	Ola-Oluwa	Member
Bro. Hassan Maruf	Osogbo	Member
Alh. R.A. Olabomi	Boripe	Member
Alh. B.D. Ajani	Irepodun	Member
Alh. K.F. Adebisi	Odo-Otin	Member
Bro. Bashir Oduwole	Ayedaade	Member
Alh. H.O. Arikewuyo	Olorunda	Member
Bro. Yaqub Oyedemi	Ede	Member
Bro. Y.A. Alimi	Ilesa	Member

APPENDIX VI

In the name of Allah the Beneficent the Merciful

IN THE INDEPENDENT *SHARI'AH* ARBITRATION PANEL OF IBADAN, OYO STATE, HOLDING AT ALHAJ ABDUL AZEEZ ARISEKOLA ALAO MOSQUE, IWO ROAD, IBADAN, BETWEEN 4TH RABIUL AWWAL AND 20TH RABIUL THANNI, 1423AH

(16TH MAY AND AUGUST 29TH 2002)

BEFORE:	Alhaj Ahmad Tiamee	President
	Alhaj Abdul Ahmed Abdul Rasaq	Member
	Alhaj Zakariyyah Abbas	Member
	Alhaj Ismail Awwal	Member
BETWEEN	Bashirat Daud	Plaintiff
	Vs	
	Isiaka Makinde	Defendant

STATEMENT OF CLAIM: Dissolution of Marriage and Injunction

PRESENT: On 4th Rabiul Awwal 1423 (16th May, 2002) both the Plaintiff and the Defendant appeared before the Panel separately at different times, in consonance with the procedure of *Shari'ah.*

The plaintiff (female) stated in Yoruba language thus: I am Bashirat Daud at Ogba-Ope's Compound, Alagbo Bus stop, Oke Labo, Ibadan. I am 33 years old. I married Mr. Isiaka Makinde in 1994. I gave birth to three female children out of which the last two are for Mr. Isiaka Makinde and the first one to another man before I got married to Defendant. The names and dates of birth of the children born to the defendant are Shukurat Makinde born on 25th September, 1996 and Halimat Makinde, born on 14th February, 2002.

I intend to divorce him just because of the following reasons:

1. I was not allowed to use veil, so as to complete the Islamic way of female dressing.
2. I lack adequate care from him.

3. He often beats me as soon as a slight misunderstanding arises.

4. We are no more compatible.

In response to all she has just said, the panel made her know that, in Islam it is only husband who can seek for divorce, that the wife has no right whatsoever to seek for divorcee. The wife may say that she is no more interested in the continued marriage relationship and must return the dowry to the husband if the husband agrees to the divorce request or if a *Shari'ah* Court so orders. On 11th Rabiul Awwal 1423AH (23rd May 2002), both parties appeared before the panel. The defendant (Male) stated in Yoruba Language thus: I am Isiaka Makinde, living at No 52, Mosalasi Bus stop, Odo-Oba, Ibadan. I am a public letter writer and typist by profession. The Plaintiff is my wife. I decided to dissolve our relationship simply because of the following reasons:

1. She is a hard-hearted person.

2. She does things by her own wish.

3. She lacks respect for my relatives

4. She does victimize my life by tearing my clothes, damaging things and even locked up the door of our room whenever a misunderstanding arises.

5. She started using veil without my permission.

QUESTION BY THE PANEL: Has the normal steps to divorce been taken? Steps like: lecturing her, denying her conjugal opportunity, slight beating and response by the Defendant; Yes.

At this juncture, the Panel made him know that all these faults complained of about his wife are parts of the ordained habit of a woman, and that women can not be 100% perfect, since they are not angels. He was also made to know of the Prophetic saying that, women are like a bent rib; if man decides to straighten it with force, it will surely be damaged.

Both of them were made to realize the likely implications of divorce or broken home particularly on the fruit of the marriage. Defendant insisted that he had decided not to have any relationship with her again and that his yes is yes

while his no will definitely be capital No. Despite further persuasions, sermonization, advice and effort to put things in order between them by the Panel, both of them disallowed reconciliation. The Panel therefore asked them to go home and think deeply on all they had been taught and the case was adjourned to 18th day of Rabiul Awwal 1423AAH (30/5/2002).

On 18th Rabiul Awwal, 1423 both plaintiff and defendant appeared before this panel.

Firstly, Mr. Isiaka Makinde was asked about his decision concerning what he was asked to think about. He answered that there is not much to think of, since he had decided not to have any relationship with her again and that he was still on his stand against reconciliation.

Then, the Plaintiff was also questioned as her husband. She answered that, she did not intend to leave him right from time just because of the children but the victimization had become what she could not bear.

The panel, again, made them realize all the likely effects of divorce or the likely problems, which often accrue from a broken home among which are:

1. Children from a divorce home often become truant in school;
2. Children from a divorce home often diminish or decrease in talent.

Further to all the above admonishing by the panel, both parties were also urged to reconcile for their own future's sake and for the future of their children. Both of them disagreed and they did not give room for reconciliation.

QUESTION BY THE PANEL: When did you pronounce that you had divorced her? Reponse: It is finally pronounced now.

The panel therefore concluded that, the pronouncement would be effective if the woman is not having her menstruation period now, but if she is, then divorce is yet to commence. So, if she finishes her menstruation that same day, she will start counting a three- month menstruation period (*Iddah*) immediately. But if reconciliation comes in the course of the (Iddah) period, then they will have to resume their marital relationship and that divorce will no more have effect.

As at 30th May 2002, according to Bashirat, she is having her menstruation period and by 31st May 2002 she will finish with it. That is, she will start counting

it from 1st June, 2002 and by 28 August, 2002 she will finish the three-month period. She is supposed to spend the three months in her husband's (Isiaka Makinde) house but both disagreed vehemently to that and she was asked to do it in her place in Lagos.

The panel asked both of them to re-appear before the Panel after that three month period along with the children, when the final judgment shall be taken on 29th August, 2002.

Mr. Isiaka Makinde was given the estimation of the wife and children's feeding, since they are no more together and that after the three months period, another estimation, which shall base only on the children's caring shall be pronounced.

Here is the estimation for the 3 months:

1st daughter's feeding allowance ₦50

2nd daughter's feeding allowance ₦50

Mother's feeding allowance ₦50

It makes a total sum of ₦4,500 in a month and ₦13,500 for the three months. Isiaka Makinde said he was not capable of paying that amount but he can afford only ₦2,000 per month. He tried to give some excuse which eventually made the panel consent with him and he was asked to bring that ₦2,000 agreed upon for each month down to *Shari'ah* Panel's Office at Oja'ba, Ibadan where his wife shall collect it as from 4th April 2002.

On 21st Rabiul Thanni, 1423 (29th August, 2002), both parties appeared before the Panel.

Mr. Isiaka failed to bring the money which he was asked to bring purposely for the wife and children's allowance for the period of three months, the total of which is ₦6,000.00.

QUESTION BY THE PANEL: Why did you fail to bring the money you promised to bring? It was due to my business failure and at the same time, I lost my passbook through her in which I have the sum of ₦6,000.00.

Moreover, there is one of my sister's cloths with her which she refused to return.

QUESTION BY THE PANEL TO THE WIFE: Do you know anything about the passbook? Response: No, I bear witness by Allah in whose hand is my soul.

QUESTION BY THE PANEL TO THE WIFE: What about his younger sister's cloth? Yes, it is with me. She gave me to sew and she is yet to pay. The cost is ₦450.

Mr. Isiaka was made to know that all these additional complaints were not part of what he lodged but only a baseless excuse for not bringing the money, because he had never mentioned all these before.

In view of all the foregoing, this Panel rules as follows:

The plaintiff's claim for the dissolution of marriage between her and her husband (the Defendant), is hereby ordered subject to the following Qur'anic and Hadith pronouncements

QUR'AN

1. When you divorce women, divorce them after *Iddah* (prescribed period) and count accurately their *Iddah* period and fear Allah your Lord… (Qur'an 65 v. 1)
2. Divorce is twice, either retain her on reasonable term or release her with kindness… (Qur'an 2 v. 229)

HADITH: It was narrated on the authority of Ibn Majah that, the Holy Prophet (S.A.W.) said, "the authority of divorce is in the hand of the husband".

In consonance with the above two verses of the Holy Qur'an and the saying of the Prophet (S.A.W.), the husband had voluntarily divorced his wife in the presence of the Panel by saying that "today 30th May, 2002, I divorce you my wife", and the wife started her Islamic *Iddah* on the 1st June, 2002. The husband refused to re-call her back (subject to Islamic injunction) for resolution after she had finished *Iddah* for the first and second time. As a result of these, Allah (SWT) says in the Holy Qur'an 2 verse 230 that "And if he has divorced her the third time, then, she is not lawful to him thereafter until she has married another husband"

Having heard the marriage renunciation of each other by both the Plaintiff and the Defendant, this panel rules that the plaintiff's claim of dissolution of marriage is therefore granted today, Yaomal Khamis, 21st day of Jummadal Thanni, 1423 i.e (29th August, 2002).

Now the wife is entitled to marry any other husband of her choice, with new marriage arrangement as may be deemed necessary.

PLACEMENT OF THE CHILDREN WITH THE APPROPRIATE PARTY ACCORDING TO ISLAMIC *SHARI'AH* INJUNCTION

The husband was asked whether he would be pleased with Allah's injunction on the children's placement. He answered yes, since it is Allah's injunction so he has no choice. The person who is entitled to take care of the children is the wife as far as she is yet to marry, but if she intends to marry, the entitlement will be shifted to her mother. If no one could be responsible for their care then the entitlement will be transferred to the husband's mother.

Since Bashirat Daud is yet to be married to another man, she is entitled to be given custody of the children, but as soon as she intends to marry she must notify the Panel so that custody of the children could be transferred to her mother because the Plaintiff has no right whatsoever to take the children's to another husband house.

From the effective date of dissolution of the marriage, the estimation of the children daily feeding allowance shall be as follows:

The first daughter's feeding allowance	₦60
The second daughter's feeding allowance	₦60
Total per month	**₦3,600.00**

The defendant will also be responsible for the children's education as soon as they start schooling and medical care should be arranged for them in case they need same. Moreover the defendant shall also provide clothing for the children at least, two times in a year.

To this, the Defendant disagreed on the ₦3,600 monthly allowance and only agreed to bring ₦2,000 per month and that the children should not be allowed

to stay with their mother (plaintiff) but he agreed that they should stay with the plaintiff's mother. The Panel endorsed this request.

Ahmad Tiamiyu (signed) **Abdul Abbas Zakariyya (signed)**

(i) Name & Sign Name & Sign

President Member

Abdur-Rasaq A.H Akuru (signed) **Ismail Muhammad Awwal (signed)**

(ii) Name & Sign Name & Sign

Member Member

Oyeniran Saheed O. (signed)

Senior Registrar

Copies of this Ruling to be served on the Parties:

1. Basirat Dauda (Plaintiff)
2. Isiaka Makinde (Defendant)

The above for your information and necessary action, please

Oyeniran Saheed O. (signed)

Senior Registrar

IN THE INDEPENDENT *SHARI'AH* ARBITRATION PANEL OF IBADAN, OYO STATE, HOLDING AT ALHAJI AZEEZ ARISEKOLA ALAO CENTRAL MOSQUE, IWO ROAD, IBADAN BETWEEN 11TH RABIUL AWWAL - 14TH JUMADAH THANNI 1423AH (23RD MAY – 22ND AUGUST, 2002) CASE NO 02/2002

BEFORE:	ALHAJ AHMAD TIAMEE	PRESIDENT
	ALHAJ ABDUL AHMED ABDUL RASAQ AKURU	MEMBER
	ALHAJ ZAKARIYYA ABBAS	MEMBER
	ALHAJ ISMAIL MUHAMMAD AWWAL	MEMBER

BETWEEN TOYYIBAT ADBUL AZEEZ BALOGUN

Vs

ISIAKA BALOGUN

STATEMENT OF CLAIM: Dissolution of Marriage and Injunction

PRESENT: Both the Plaintiff and the defendant appeared before the Panel separately at different time in consonance with the procedure of *Shari'ah.*

The plaintiff (female) stated in Yoruba Language thus: I am Toyyibat Abdul Azeez Balogun, living at SWS/762 Elewura Bus-Stop, Challenge, Ibadan. I am 38years old. I am a trader. The Defendant is my husband and I married him in 1987. I gave birth to four children of which three are female and a male for him. The eldest child is 15years old now. I married him ignorantly without any marriage procedure.

I intend to divorce him simply because of the following reasons:

(i) He is a drunkard and I had tried all my best to stop him but all efforts proved abortive.

(ii) He lacks husband's responsibility on the family.

(iii) I had suffered a lot of beating which often accrue from his drinking habit.

In response to all that she said, the Panel made her to know that, in Islam, it is only the husband who can seek for divorce, that the wife has no right whatsoever to seek for divorce. The wife may say that, she is no more interested in the continued marriage relationship and must return the dowry to the husband, if the husband agrees to the divorce request or if a *Shari'ah* Panel so-orders.

On 14th Rabiul Awwal 1423AH (26th May, 2002) both partners appeared before the panel at Sarafadeen Mosque beside their house (SW9/762 Elewura Bus-Stop Challenge, Ibadan) after the Defendant had dis-honoured the Panel's formal invitation.

The Defendant (Male) stated in Yoruba Language thus: I am Isiaka Balogun, living at the same residence as the Plaintiff (Toyyibat Abdul Azzez Balogun). The Plaintiff is my wife I confirm that all she complained about me is true.

Several people among whom are: Mr. Ganiyu Adeoti (a co-tenant), Imam Isiaka from Sarafadeen Mosque beside their house, Tajudeen Abdulahi and his bosom friend, (Mr. Kamarudeen) witnessed against him that all what his wife complained of him were actually true, and he did not dispute the allegation.

The Panel made him to know the effects of all his acts in reference to some verses of the Holy Qur'an and the sayings of the Holy Prophet Muhammed (S.A.W). He then vowed by Allah's name that from today 14th Rabul-Awwal 1423AH (26/5/2002) he will never go back to those acts again and that he would change from this moment on for good.

On 18th Rabiul-Awwal 1423AH(30/5/2002), the Plaintiff (Toyyibat Abdul Azeez Balogun) appeared before the panel to appreciate all their efforts in changing her husband from bad to good. She affirmed that he has started taking responsibility for the family and turned a new leaf generally.

It was an unfortunate thing to hear again from the Plaintiff two weeks after the commendable report on the defendant, that the latter has relapsed to his previous bad behaviour.

Both parties, appeared before the Panel on 13th Robiul Thanni 1423AH (3/6/2002), at that same Sarafadeen mosque, beside their house, (SW9/762 Elewura Bus-Stop Challenge, Ibadan). The Panel observed that the bad character of the Defendant as earlier complained of has actually worsened. On this occasion, the defendant renounced the Panel and asserted that he is no more interested in the continuation of his marriage to the Plaintiff. He infact, decisively asked the Panel to find another husband for the Plaintiff. He then walked out on the Panel.

The Panel observed that the defendant's misconduct before the Panel was traceable, sweating profusely and showed no responsibility for his family. The

Panel therefore, adjourned the case to 17/4/1423AH (7/6/2002) for a decision on the matter.

Only the Plaintiff appeared before the Panel on 17th Robiul Thanni 1423AH (7/6/2002). The People heard from the Plaintiff that despite all efforts of the Panel to conform to normal and responsible matrimonial behaviour, the defendant was daily degenerating. According to the Plaintiff, not only has the defendant refused to stop drinking alcohol but has shown no willingness for reconciliation and has infact affirmed his disinterestedness in continuing with the marital relationship.

Consequently, the Panel ruled that the Plaintiff should begin her three month *Iddah* period as from 23rd June, 2002 and finish same on 22/8/2002. She was then directed to appear before the Panel on Thursday 22/8/2002 for the final action on her case if eventually the defendant refuses to call her for reconciliation.

In view of the foregoing, this Panel ruled on 14th Jumadal-Thanni, 1423AH (22/8/2002) as follows:

The Plaintiff's claim for dissolution of marriage between her and her husband (the defendant), is hereby ordered subject to the following Quranic and Hadith pronouncements.

QUR'AN

(1) When you divorce women, divorce them after *Iddah* (prescribed period) and count accurately their *Iddah* period and fear Allah your Lord… (Qur'an 65 v. 1).

(2) Divorce is twice, either retain her on reasonable term or release her with kindness… (Qur'an 2 v. 229).

HADITH

It was narrated on the authority of Ibn Majah that, the Holy Prophet (S.A.W.) said "The authority of divorce is in the hand of the husband".

In consonance with the above two verses of the Holy Qur'an and the saying of the Prophet (S.A.W.), the husband had voluntarily divorced his wife in the presence of the Panel by saying that today"23rd June 2002 I divorce you my wife" and the wife started her Islamic *Iddah* on 23rd June, 2002. The husband refused to recall her back (Subject to Islamic Injunction) for resolution after she had finished Iddah for the first and second time. As a result of these, Allah (S.W.T.) says in the

Holy Qur'an 2 v. 230 that "And if he has divorced her the third time, then, she is not lawful to him thereafter until she has married another husband"

Having heard the marriage renunciation of each other by both the Plaintiff and the Defendant, the Panel ruled that the Plaintiff's claim of dissolution of marriage is therefore granted today, Yaomal Khamis, 14th Jumadah-Thanni, 1423AH (22nd August, 2002).

Now the wife is entitled to marry another husband of her choice, with new marriage arrangement as may be deemed necessary.

	Ahmad Tiamiyu (signed)	**Abbas Zakariyya (signed)**
(i)	Name & Sign	Name & Sign
	President	Member
Abdul Razaq A. Hameed Akuru (signed)		**Ismaila Muhammad Awwal (signed)**
(ii)	Name & Sign	Name & Sign
	Member	Member

Oyeniran Saheed O. (signed)
Senior Registrar

Copies of this Ruling to be served on the Parties

1. Toyybat Abdul-Azeez Balogun
2. Isiaka Balogun

The above for your information and necessary action, please

Oyeniran Saheed O. (signed)
Senior Registrar

IN THE NAME OF ALLAH THE BENEFICIENT AND THE MERCIFUL
IN THE INDEPENDENT *SHARI'AH* ARBITRATION PANEL OF OYO STATE, HOLDING AT OJA'BA CENTRAL MOSQUE IBADAN ON 15/10/1423AH – 2/2/142AH. EQUIVALENT TO 19/12/2002 – 3/4/2003

BERORE: Alhaji Abdul Wahab Bayo Ahmed Chairman Judicial Consultative Committee

Alhaji Ahmad Tiamiyu	President
Alhaji Bashir Adelani	Member
Alhaji Zakariya Abass	Member
Alhaji Ismail Muhammad Awwal	Member
Alhaji Bashir A. Busayri-Alaka	Member
Alhaji Benjamin Bello	Member

Case No: 21/02

Mr. Ambali Sule Akande {Inheritance}

PRESENT: The complainant (Mr. Ambali Sule Akande) appeared before the panel on 15/10/1423AH (19/12/02).

The complainant stated in Yoruba Language thus: I am Ambali Sule Akande living at No 99 Opp. National Petrol Station, Iwo Road, Ibadan. My Father's name is Alhaji Sule Akande (Manager) who died on 20th September, 2000. He was survived by 15 Children among whom 9 are male and 6 female. He married 9 wives out of which 8 had divorced him during his life time. The first wife who gave birth to 6 children remains in my father's house. Others with a child each and one with two children had divorced my father. The panel made him to know that, if among the children, one died during the life time of their father and the child left a family (children or wife) such his family is entitled to nothing in the properties, even his father who died after his death still have certain proportion to share in his own properties. But if it were to be after the father's death, his family is entitled to only his own proportion of his properties.

Question by the Panel: What are the properties left by your father?

Response: He left land, motor and buildings but we have sold the land to obtain a letter of administration from court and the motor was sold too, we are only left with three buildings.

The Panel asked him to bring the estimated number of the rooms in each of the buildings. The case was adjourned to 29/10/1423AH (2/1/03).

On 29/10/1423AH 2/1/03) Mr. Ambali Sule Akande brought the estimated number of the rooms in each of the buildings and was asked to come along with the number of the children to know their stand in using *Shari'ah* to share their Father's properties. The case was adjourned to 20/11/1423AH (23/1/03).

On 20/11/1423AH (23/1/03) Mr. Ambali Sule Akande in company of eleven other children appeared before the panel. The panel questioned each of the children on their stand in sharing the properties with Allah's injunction as follows:

Question by the Panel: "What is your name?"

Response: "I am Daud Sulaiman Akande"

Question by the Panel: "What is your occupation?"

Response: "I am a Government worker"

Questions by the panel: "What age are you?"

Response: "I am 50 years old"

Question by the Panel: "What is your mission here?"

Response: "We are here purposely to support the idea of sharing our Father's properties according to *Shari'ah* Law which is Allah injunction."

Question by the Panel: "Do you decide that or you are instructed or compelled to support the use of *Shari'ah* in sharing the properties?"

Response: "Neither was I instructed nor compelled"

Question to another person: "What is your name?"

Response: "I am Abubakar Sulaiman Akande?

Question: What is your occupation?"

Response: "I am the Imam of our Father's Mosque"

Question: "What is your own mission here too?"

Response: "I am here to express my support in sharing my father's properties according to *Shari'ah***"**

Question by the Panel: "What age are you?"

Response: "I am 34 years old"

Question by the Panel: "Are you satisfied with that?"

Response: "Yes, of course"

Question to another person: "What is your name?"

Response: "I am Abdullah Sulaiman Akande"

Question: "What is your age?

Response: "I am 22 years"

Question: "What is your mission here?"

Response: "I am here to support the idea of sharing our father's properties according to *Shari'ah***"**

Question: "What is your occupation?"

Response: "Student"

Question: "Are you being compelled to use *Shari'ah*?"

Response: "No". I just wish we use *Shari'ah***"**

Question to another person: "What is your name?"

Response: "I am Yaqub Sulaiman Akande"

Question: "What is your age?"

Response: "I am 17 years old"

Question: "What is your occupation?"

Response: "I am a student"

Question: "What is your mission here?

Response: "I came in support of the idea to share my father's properties according to *Shari'ah***"**

Question to another person: "What is your name?"

Response: "My name is Tirimithy Sulaiman Akande"

Question: "What is your occupation?"

Response: "I am a student of Bishop Phillip Academy Ibadan"

Question: "What brought you before the Panel?"

Response: "I came purposely to support the use of Allah's law in sharing my father's properties"

Question to another person: "What is your name?"

Response: "I am Medinat Sulaiman Akande"

Question: "What is your age?"

Response: "I am 14 years old"

Question: "What is your occupation?"

Response: "I am a student of Odusanya Nursery and Primary School"

Question: "What actually brought you here?"

Response: "I am here in company of my elder brothers and sisters to take part in the sharing process of my father's properties according to *Shari'ah* procedure".

Question to another person: "What is your name?"

Response: "I am Bilqis Sulaiman Suhara"

Question: "What is your age?"

Response: "I am now 47 years old"

Question: "What is your occupation?"

Response: "Trading"

Question: "What is your mission here?

Response: "I am here in support of the idea to share our father's properties according to *Shari'ah"* procedure".

Madam Bilqis further expressed that, there is enmity among them (the children) that the panel should asked them again before they leave the courts, if it was actually true that they are satisfied with the use of *Shari'ah.* The panel made them to know that, whoever among the children that aids how the parent's absence will be disorganized; such a child's absence will surely be disorganized when he/she too leaves the surface of the earth. And whoever had any bad thing in mind should please, for Allah's sake remove it and be good to others.

Question by the Panel: "We were made to know that you children are 15 in number and you that appeared now are 8; do you think your response now will be the same response as others, as regard to the use of *Shari'ah* in sharing your father's properties?"

Response: "Yes, since we all signed to use *Shari'ah".*

The Panel made them to realize that, in *Shari'ah,* every female child will only be entitled to half of what will be given to Male irrespective of their age.

The Panel shielded light to why Allah has decree it that way which is because of nothing other than the fact that, Male are pillars in the family while female were subjected to marrying out to another family. It is this Male who will remain as a monitor of their father's properties.

Question by the Panel: "Do you think that, the woman who did not sign would not react after administering?"

Response: "No, she can not react."

Question: "How many wives has your father before he died?"

Response: "He married many wives but 9 gave birth to 15 children for him out of which 9 are Male and 6 are female"

Question: "Did he divorce any of the wives before he died?"

Response: "He divorced 8 but the eldest wife is still in his house up till today; though he had a little rift with her that made her to be absent in the house during his death's time"

Question: "Can you please clarify this; was that rift a type that may result to divorce?"

Response: "No, it was we (her children) that asked her to leave because of the rift, so as not to lead to any problem".

Question: "Who among the Children that was around at your father's point of death?

Response: It was I Abubakr Sulaiman Akande"

Question: "Was there any statement as regard to the properties made by your father before he died?"

Response: "No."

Question: "Who among the wives did "*Opo"* after your father's death?

Response: Except the first wife who stayed for the full period of 4 months and 10 days but others did come and leave"

Question: "Did the deceased one among you children died during your father's life time or after his death?"

Response: "He died during his (father) life time".

The panel made them to know that, in *Shari'ah*, a child who died during his/her parent lifetime is entitled to nothing of the parent's properties even if such a child is survived by children and wife. But it is the parents who are entitled to certain part of his/her properties since they witness his/her death.

More so, a divorced wife is not entitled to any of the husband's properties, even if she gave birth to children for him, it is that children who have right

to share in their father's properties, since their mother had divorced, her marital contract with him had terminated.

Question by the Panel: "You said your father left 3 buildings?"

Response: "Yes, it is".

Question: Why is it that, the Panel's decision will take effect from January 2004?

Response: "It is because the rental value of the buildings for the year 2003 had been partly collected, the remaining will be collected very soon but the panel's decision will only take effect by January 2004".

Then, the panel decided to visit the buildings on Thursday 30/1/03 for the confirmation of record of the estimated number of rooms in each of the buildings given to the panel by the family head (Mr. Ambali Sule Akande).

The reports of the Panel's inspection to Late Alhaji Sule Akande's properties as to confirm the record of the buildings given to the Panel; held on 30/1/03 at No. 99 Opp. National Petrol Station, Iwo road, where the buildings were situated.

FIRST BUILDING:

The first building is two story building of which its second floor contains 4 small equal rooms size $^{2}/_{3}$ of 10 by 12.

Its first floor contains a sitting room of size 20 by 14, 7 equal rooms of size 10 by 12, 2 toilets 2 bathrooms and 2 kitchens.

Its ground floor contains 3 equal rooms of size 10 by 1, 1 bathroom, 1 toilet, 1 kitchen and 10 shops of different sizes.

Shops No 1 and 3 are of equal sizes greater than others. Shops No 2 and 4 are of equal sizes with the same rental value. Shops 5 to 7 are of the same sizes and rental value. Shops 9 and 10 are of the same sizes 8 by 7 while shop 8 is the smallest in size but it is of equal value as shops 5, 6, 7, 9 & 10.

SECOND BUILDING:

It contains (4) 3 bedroom flat of equal sizes and equal rental value and (1) 3 bedroom flat that is smaller in size as the (4) 3 bedrooms in the same building but it is of equal rental value.

Then, there is (1) 2 room apartment of a size smaller than others and different rental value. It also contains 6 shops of different sizes and rental value. Shops No 2 and 4 are of equal sizes and rental values greater than others. Shops No 1 and 3 are of the same sizes and rental values smaller in size as 2 and 4 but greater than others. Shop 5 is greater in size and rental value than shop six which is the smallest in size and rental value.

THIRD BUILDING:

The third building contains (7) 2 bedroom flat, a store and a Mosque. It also contains 5 shops of different sizes and rental values.

Shops No 3 and 4 are of the same sizes and rental values greater than others. Shops No 1 and 5 are of equal sizes and rental values greater than shop 2 which is the smallest in size and rental value of the whole 5 shops.

On 26/12/1423AH (27/2/03), Mr. Saibu Sule Akande who is among the children of late Alhaji Sule Akande (Manager) appeared before the Panel.

He stated in Yoruba language thus: I am Saibu Sule Akande. I am about 45 years old and a bicycle repairer. What I am fighting for is nothing but the right of the younger one and his life too.

I just want the properties to be shared accordingly. Amongst the properties was a land which was sold for about ₦600,000.00 but unfortunately something ₦75,000.00 was realized and was shared at the rate of ₦10,000.00 each among the children. The remaining part of the money, which we supposed to have shared for the second time, is yet to be surrendered. He (Mr. Ambali Sule Akande) said the tenant owned him and there is no money, which we can share.

I agreed that the *Shari'ah* panel should share it for us and that was the reason why I signed. The panel made Mr. Saibu to realize that the issue of inheritance had already been stated in the Holy Qur'an and the panel is ready to administer the task in consonant with Allah's Injunction without favouring one over another among the beneficiaries irrespective of their age or whatever. The case was adjourned to 4/1/1423AH (6/3/03).

On 4/1/1423AH (6/3/03), Madam Fatimah Lawal who is one of the children of late Alhaji Sule Akande (Manager) appeared before the Panel.

The panel made her to know that, the case was brought by Mr. Ambali Sule Akande who happened to be the family head and that she was not among other

children who appeared on a given day and she did not sign the sheet showing others interestedness in *Shari'ah* to share their properties.

She explained: "I am Fatimah Lawal, about 42 years old. I am a teacher by occupation. It was true that I deliberately decided not to sign the sheet when Mr. Ambali brought it, because I don't trust him, he is dubious in character. I even wondered why he would be so worried about the sheet brought to me on the second time, when he did not meet me in the first time. I do not understand what *Shari'ah* entains to tell him that, I would have to ask my Alfa what that *Shari'ah* really means before I can sign".

Question by the Panel: "Have you done your research"?

Response: "Yes".

She asked: Do you ask him (Mr. Ambali) of the money we suppose to share in 2002? The Panel's response: "No", because we were not informed about that, and the panel, was not ready to go beyond the limit".

Then, the Panel urged her to shield more light on the issue in order to assist to arrive at a better conclusion. She further explained: "I was only fortunate that I was sent to school up to University level by another man whom my mother married after leaving my father's house. During my father's life time, I was his secretary and I knew all what he left among which were three passbooks and land which was sold in collaboration with a lawyer and the land money was shared among them including my elder brother Saibu who told me all about their deeds.

I wasn't worry about that because, I am working and my salary is enough for me even if the whole property is shared and nothing is given to me. It is now that, I know what the *Shari'ah* stands for on this issue that I can sign and agree that the properties be shared in accordance with Allah's injunction (*Shari'ah*)".

The panel told her what Allah says in the Holy Qur'an as regards to inheritance that: the female is entitled to half of what is given to male irrespective of their age or whatever as stated in Qur'an chapter 4 v 11. Then, she agreed and signed the sheet, which was signed by others showing their interestedness to share the properties with Allah's law (*Shari'ah*).

In accordance to the rules of Allah on inheritance as stated in the holy Qur'an chapter 4v 11, 12 and the Sunnah of the Holy Prophet (S.A.W).

There are two kinds of heirs who are entitled to these properties: The wife and children (Males and females). According to the principle of inheritance in *Shari'ah,* the wife/wives take $^{1}/_{8}$ of the whole legacy as stated in the Holy Qur'an chapter 4 v 12, "…… In what you leave, their (your wives) share is a fourth (¼) if you leave no child; but if you leave a child, they get an eighth ($^{1}/_{8}$) of that which you leave after payment of legacies that you may have bequeathed or debts……". While the children are residualist who share the remaining properties in accordance with Allah's injunction as stated in the Holy Qur'an chapter 4 v 11 that "Allah commands you as regards your children's (inheritance): to the male, a portion equal to that of two females……"

The panel, in her decision, depending on the afore-mentioned references from the Holy Qur'an, shared the properties among the heirs as follows:

		PORTION OF THE PROPERTIES	**AMOUNT GIVEN**			
S/N	**WIFE**					
	1	SEVEN ROOMS, 1ST FLOOR OF THE HOUSE 1.	33,600			
	2	2 ROOMS –2ND FLOOR OF THE HOUSE 1	7,200			
	3	2 ROOMS IN THE GROUND FLOOR OF HOUSE 1	9,600			
	4	SHOP "1" OF HOUSE "1"	40,000			
	5	SHOP "2" OF HOUSE "1"	20,000			
		TOTAL	**110,400**	**110,425**	**₦25**	**CREDIT**
	CHILDREN					
2	MALE "1"					
	1	A 3 BEDROOM FLAT OF HOUSE 2	40,000			
	2	SHOP "4" OF HOUSE "1"	20,000			

	3	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
3	MALE “2”					
	1	3 BEDROOM FLAT OF HOUSE “2”	40,000			
	2	SHOP “5” OF HOUSE “1”	10,000			
	3	SHOP “6” OF HOUSE “1”	10,000			
	4	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
4	MALE “3”					
	1	3 BEDROOM FLAT OF HOUSE “2”	40,000			
	2	SHOP “7” OF HOUSE “1”	10,000			
	3	SHOP “8” OF HOUSE “1”	10,000			
	4	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
5	MALE “4”					
	1	3 BEDROOM FLAT OF HOUSE “2”	40,000			
	2	SHOP “9” OF HOUSE “1”	10,000			
	3	SHOP “10” OF HOUSE “1”	10,000			
	4	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
6	MALE “5”					
	1	3 BEDROOM FLAT OF HOUSE “2”	40,000			
	2	SHOP “5” OF	15,000			

		HOUSE “2”				
	3	SHOP “6” OF HOUSE “2”	5,000			
	4	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
7	MALE “6”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			
	2	SHOP “2” OF HOUSE “2”	30,000			
	3	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
8	MALE “7”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			
	2	SHOP “4” OF HOUSE “2”	30,000			
	3	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
9	MALE “8”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			
	2	SHOP “3” OF HOUSE “3”	30,000			
	3	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
10	MALE “9”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			

	2	SHOP “4” OF HOUSE “3”	30,000			
	3	ONE NINETH OF (A.J.O)	4,377			
		TOTAL	**64,377**	**64,414**	**₦37**	**CREDIT**
		LIST OF A.J.O. (ASSETS JOINTLY OWNED) BY NINE MALE CHILDREN				
	1	A ROOM IN THE 2ND FLOOR OF HOUSE “1”	3,600			
	2	A ROOM IN THE GROUND FLOOR OF HOUSE “1”	4,800			
	3	SHOP “3” OF HOUSE “2”	25,000			
	4	SHOP “2” OF HOUSE “3”	6,000			
11	FEMALE “1”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			
	2	15% OF THE TWO ROOMS APARTMENT	2,250			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
12	FEMALE “2”					
	1	A TWO BEDROOM FLAT OF HOUSE “3”	30,000			
	2	15% OF THE TWO ROOMS APARTMENT	2,250			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
13	FEMALE “3”					
	1	A TWO BEDROOM	30,000			

		FLAT OF HOUSE "3"				
	2	15% OF THE TWO ROOMS APARTMENT	2,250			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
14	FEMALE "4"					
	1	SHOP "1" OF HOUSE "3"	15,000			
	2	SHOP "5" OF HOUSE "3"	15,000			
	3	15% OF TWO ROOM APARTMENT	2,250			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
15	FEMALE "5"					
	1	SHOP "3" OF HOUSE "1"	30,000			
	2	15% OF TWO ROOMS APARTMENT	2,250			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
16	FEMALE "6"					
	1	SHOP "1" OF HOUSE "2"	25,000			
	2	A ROOM OF THE SECOND FLOOR OF HOUSE "1"	3,6000			
	3	25% OF TWO ROOMS APARTMENT	3,750			
		TOTAL	**32,250**	**32,207**	**₦43**	**DEBIT**
		N.B THE 2 ROOMS APARTMENT "2"	15,000			

The panel observed that the said properties will definitely require timely maintenance. Therefore, in order to facilitate financial contribution for the maintenance of the buildings, the panel suggested that all children (male and

female) donate the share of their income from the Assets Jointly Owned (A.J.O.) of the buildings with the exception of female "6" (No 16) who shall be given 10% of her share of the Asset Jointly Owned because her share of the (A.J.O) is ordinally 25% and that because all female children donate 15% each.

May Allah continue to shower his blessing upon the Prophet Muhammed (S.A.W.) his house hold, his companions till the day of reckoning. (Amen).

Signed 06/04/03
Name & Sign.
Chairman Judicial Consultative Committee

Signed 6/4/03
Name & Sign.
President

Signed 07/04/03
Name & Sign.
Member

Signed 6/4/03
Name & Sign.
Member

Signed
Name & Sign.
Member

Signed
Name & Sign.
Member

Signed
Name & Sign.
Member

Signed
Senior Registrar

APPENDIX VII

SAMPLE OF THE QUESTIONNAIRE ADMINISTERED ON THE STUDY

FACULTY OF ARTS

UNIVERSITY OF IBADAN

QUESTIONNAIRE

Dear Respondents,

There is a research being carried out in the above University on Sharia. The purpose of this questionnaire therefore is to give the researcher some pieces of information on the subject. It will be highly appreciated if you can please read and complete the questionnaire. Kindly feel free to express your opinion and ideas, for the information supplied shall be treated confidentially.

A tick (√) will be required in space provided in front of each statement where necessary.

SECTION A – GENERAL INFORMATION

1. Sex Male ☐ Female ☐
2. Marital Status Married ☐ Single ☐
3. Age 20-40 ☐ 40-60 ☐ Above 60 ☐
4. Religion Christianity ☐ Islam ☐
5. State of Origin Osun ☐ Oyo ☐

SECTION B – OTHER INFORMATION

1. Are you aware that Nigeria has for long been applying Sharia?
   Yes ☐ No ☐
2. Do you agree that Sharia concerns Muslims only? Yes ☐ No ☐
3. Do you agree that Sharia issue is mis-construed by many Nigerians?
   Yes ☐ No ☐
4. Sharia issue has generated religious misunderstanding in the country?
   Yes ☐ No ☐
5. There is need for enlightenment to Nigerians on what Sharia is all about.
   Yes ☐ No ☐
6. There is need for inter-religious dialogue to solve religious problems, particularly the issue of Sharia? Yes ☐ No ☐

7. The Muslims should forego Sharia completely because of the problem it generated? Yes ☐ No ☐
8. Non-Muslims should leave Sharia alone because it does not affect them adversely? Yes ☐ No ☐
9. The Muslims can ask for it but in a peaceful and constitutional manner? Yes ☐ No ☐
10. Sharia is the right of the Muslims to be asked for? Yes ☐ No ☐
11. The non- Muslims should not feel threatened by the introduction of sharia in some states. Yes ☐ No ☐
12. Are you aware that Sharia was applied at a particular period or the other in any part of this state? Yes ☐ No ☐
13. Based on section 275(i) of 1999 constitution which states that "there shall be for any state that requires it, a Sharia court of appeal", would you support that for this State? Yes ☐ No ☐