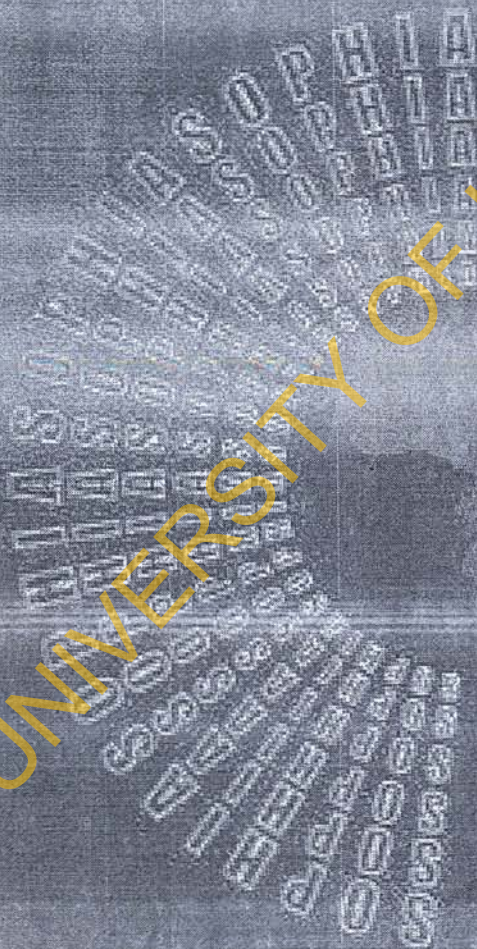


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## The practice and administration of the *Sharī'ah* in Nigeria: Issues in constitutionalism | Uthman | Sophia: An African Journal of Philosophy

### Abstract

This paper focuses on the rich and long history of *Sharī'ah* administration and practice in Nigeria with respect to the constitutional issues. It examines the place of the *Sharī'ah* in the Nigerian Constitution, its scope and penalties. How does the Nigerian constitution conceive of the *Sharī'ah* application? What is the scope of the *Sharī'ah* according to the Nigerian Constitution and can it be expanded? Does the *Sharī'ah* application contravene the Nigerian Constitution, especially on the issue of human rights and how are these constitutional issues in respect of the administration of the *Sharī'ah* being perceived by Christians and Muslims in Nigeria? These are the questions this paper seeks to answer.

**Keywords:** *Sharī'ah*, Constitutionalism, Secular State, the other.

### Introduction

For a long time, issues revolving round the Nigerian Constitution and the practice and administration of the *Sharī'ah* have been subjects of hot debate. The issues include the constitutional role of religion in Nigeria's public life, fundamental human rights and scope of *Sharī'ah* application. According to a 2010 survey, majority of Nigerian Muslims are in support of making the *Sharī'ah* the official law of the country though in the same vein, the same proportion of Christians favour using the Bible as the official law.<sup>1</sup> Likewise, according to the same survey, most of the surveyed Muslims are in support of a democratic system that upholds freedom of religion while a few of them support the death penalty for apostates, stoning for women who commit adultery and cutting off hands of the thieves. This survey points to the fact that most Nigerians, Muslims and Christians alike favour religion playing official and public roles in a democratic and pluralistic Nigeria.

How has the above popular Muslim support for the official administration of the *Sharī'ah* been captured in the Nigerian constitution is one of the important questions bordering on constitutionalism which revolves round the *Sharī'ah* practice in the country. Such questions include to what extent is the official administration of the *Sharī'ah* in Nigeria constitutional, how does the practice of the *Sharī'ah* affect the rights of Muslims and non-Muslims alike and can the application of the *Sharī'ah* in its totality be accommodated within the ambit of the Constitution of Nigeria? It is in order to unravel these constitutional complexities involved in the practice and administration of the *Sharī'ah* in Nigeria that this paper is divided into the following main sections. The first section will provide an overview of the definition and history of the *Sharī'ah* in Nigeria. This will be followed by a section on the Constitutional Restrictions imposed on the *Sharī'ah* Administration in Nigeria during the British colonial era. The third section will discuss the Common Law's notion of repugnancy to natural justice and how this was superimposed on the *Sharī'ah* with its attendant problems. The fourth and fifth sections will dwell on the Nigerian Constitution and the secular debates as well as *Sharī'ah* Administration and the Law of Apostasy. This will be followed by the conclusion.

### *Definition and Historical Overview of Sharī'ah Practice in Nigeria*

According to Quadri, "the term *Sharī'ah* literally means a path that leads to where water is fetched." He explains further that technically, it is the divine path to both material and spiritual success.<sup>2</sup> Hence, the *Sharī'ah* is all

encompassing, providing guidelines for all aspects of Muslim's life whether socially, culturally, religiously, politically, economically or legally. The life of any conscious is patterned after the *Shari'ah* from moment of birth till the time of death. The *Shari'ah* guides how the Muslims conduct their marriage and divorce, bury their dead, allocate property and estate rights and write their wills etc.<sup>3</sup> For this reason, Muslims tend to ensure that all their actions correspond to the dictates of the *Shari'ah* and that there is no disparity between their private and public as well as religious and political spheres in terms of conformity with the *Shari'ah*. This holistic attitude of the *Shari'ah* Muslims' need for a complete *Shari'ah* legal system inspite of the existence of the English Common Law and Customary Law in the Nigerian legal system

Notwithstanding the holistic nature of the *Shari'ah*, it is noteworthy here that it does not seek in the words of Muslehuddin "to crush the liberty of the individual but to control it in favour of the society which includes the individual himself, and thus protects his legitimate interests."<sup>4</sup> Thus, the *Shari'ah* is conceived as a scheme of worldly and spiritual benefits for humanity and according to most Muslim scholars it basically protects five ultimate objectives: religion, life, intellect, offspring and property. The ultimate objectives will be discussed in details in the next section on the identified constitutional issues revolving round the practice and administration of the *Shari'ah*.

Nigeria, a federation of 36 states, is like any other contemporary nation-state that holds together diverse communities of distinct religious, ethnic and cultural backgrounds though two main religions- Islam and Christianity dominate. In the North, Muslims dominate whereas in the Southeast, it is Christians that dominate. This differs from the Southwest and Middle belt areas of Nigeria, where Muslims and Christians exist in almost equal numbers respectively, such that adherents of the two religions are at times found in the same family among the Yoruba of South-western states. A recent demographical survey by Pew Forum in the USA reports an almost equal distribution of 42% for Muslims and 40% for Christians.<sup>5</sup> By this survey, Nigeria's over 160 million people is roughly divided between Muslims, concentrated mostly in the Hausa/Fulani in the North and among the Yoruba in the Southwestern parts of the country and Christians, who mostly live in the South and central parts of the country.<sup>6</sup> With a population regarded as the largest in Africa and the "greatest Islamo-Christian nation in the world,"<sup>7</sup> Nigeria is about the only country in the globe where the population of Muslims and Christians is almost equally split and where in Southwestern areas, the Muslims and Christians have been generally living together peacefully the longest for over "170 years" as at today.<sup>8</sup>

Today, Nigeria operates a multiple legal system that comprises the Common Law, believed by some to have been derived from Nigerian colonial Christian past; Customary Law derived from indigenous traditional norms and practices of Nigerian ethnic groups such as the Yoruba, Igbo and Ibibio, and the *Shari'ah* regarded by the British colonial government as the customary law in the predominantly Muslim North of Nigeria. Following the 19<sup>th</sup> Century Sokoto Jihād and the reforms of Usman Dan Fodio under the Sokoto Caliphate, the official state application of the *Shari'ah* in its totality was assured a place in pre-colonial Nigeria. This continued under the British government though with restrictions on the administration of the *Shari'ah*.

#### *British Rule and Constitutional Restriction on Shari'ah Administration in Nigeria*

To begin with, the British colonial government under Lord Lugard classified the *Shari'ah* as a form of customary law and so it had to operate under the Native Court Ordinance (NCO), thereby, reducing its jurisdiction. To Lord Lugard, the then Governor-General of Nigeria this was a fait accompli since Islam "...has the attraction of an indigenous religion spread by the people themselves."<sup>9</sup> According to the 1933 NCO, the jurisdiction of the *Shari'ah* court known as *Alkali* was reduced in cases of homicides and all such cases must be transferred to the Emir court for pronouncement of sentence. Additionally, according to 1933 NCO, certain penalties such as the punishments of amputation, death penalty and the non-inheritance by an heir whose religion differs from that of the deceased were declared repugnant to natural justice, equity or good conscience and could therefore not be applied by the *Alkali* court.<sup>10</sup>

Not surprisingly, there was opposition by the Muslims in the North to the application of NCO, even after the passing of first, the 1948 and later 1951 NCO to appease them. Finally at independence, an attempt was made to produce in the words of Karibi-Whyte (1993) "a system of criminal law" that would "enjoy international

acceptance," be applied "uniformly to the entire population" and be "in harmony with the preponderant Moslem population."<sup>11</sup> This is the Penal Code, which became effective in Northern Nigerian from the 3<sup>rd</sup> November, 1960.

However, this Penal Code, with essentially Common Law inspired penalties is in the words of Karibi-Whyte "a veritable loss to Moslem aspirations for the preservation of their way of life. Neither in form nor content is the code essentially Moslem."<sup>12</sup> This brings to mind the role of the British in the creation of polarities among Muslims and Christians through the relegation and undermining of the long-standing administration of the *Shari'ah*. This has since stifled any attempt at enabling a compromise between English Common Law and the *Shari'ah* as would be seen in the next section. Thus in the words of Ostien, "Christians missed an opportunity to settle with the Muslims the place of Islamic law in Nigeria on reasonable, honorable, and stable terms."<sup>13</sup> I now want to examine, in the next section, the constitutional issues involved in the administration of the *Shari'ah*, especially since the re-introduction of the criminal and penal laws of the *Shari'ah*.

#### *The Common Law Notion of Repugnancy and Shari'ah Administration in Nigeria*

As a result of the British intervention in the application of the *Shari'ah* during the colonial era, a lot of constitutional issues have arisen. One of such revolves round the Common Law notion of repugnancy to natural justice which was superimposed on the administration of Islamic penalties. Consequently, many penalties were declared repugnant to natural justice, equity or good conscience and therefore expunged by the NOC. This declaration accounts for the overturning of the judgment of an *Alkali* Court in 1943 that Mary, a Christian could not inherit her Muslim father by the Supreme Court. The *Alkali* Court had disallowed Mary from inheriting the property of her Muslim father because it is illegal under the *Shari'ah* but on appeal to the Supreme Court, the judgment was set aside on the grounds of repugnancy. Similarly in 1948, another judgment of an *Alkali* Court which passed the death sentence on a murderer was set aside by the West African Court of Appeal because it was contrary to natural justice and the British Common Law on provocation.<sup>14</sup> Thus the British expunged certain penalties of the *Shari'ah* on the basis of English Common Law notion of repugnancy. Therefore, a serious conflict has ensued over the scope of *Shari'ah* application. One such conflict at the constitutional conference of 1977/78 bordered on the proposal that a Federal *Shari'ah* court should be established to sit over appeals from the state *Shari'ah* courts. The proposal was rejected by the vast majority of the Christian members of the Constitution Drafting Committee based on the inevitability of not undermining the secularity of the Nigerian state and the structure of the Federal judiciary in a way that favour Muslims unduly.<sup>15</sup>

#### *Nigerian Constitution and the Secular Debates*

This question of Nigeria's secularism and the application of the *Shari'ah* have been captured by Clarke when he explains that the debate over whether Nigeria is a secular state or not has been a live issue since the colonial period and came to a head during the 1977/1978 Constituent Assembly. On the one hand were Muslims who opposed the inclusion of secularity in the draft constitution because it could be used by a ruler that is hostile to religion to impose restrictions on religious practice. On the other hand were Christians who support the inclusion of the term to express state neutrality in religious matters.<sup>16</sup> The secular question reared its head again, following the country's return to democracy in 1999 leading to what may be regarded as a new wave of Christian agitation over the fear of Muslim grand attempt at political Islamisation of the Nigerian state in the wake of the reapplication of the Criminal penal laws of the *Shari'ah*.<sup>17</sup> This happened after the re-introduction of the penal laws of the *Shari'ah* by the Zamfara state Governor on 27 October 1999, followed by eleven other states in the North should be viewed. The re-introduction was greeted by many Christians with resignation, fear, anger and frustration that sometimes boiled into violence.<sup>18</sup> They perceived the move as unconstitutional, an unusual if not absurd form of asymmetrical federalism.<sup>19</sup> Kukah and McGarvey capture this perception when they write "there is the problem of the status of the Islamic law, the Shari'a, in both the Nigerian Constitution and the Judiciary." They note further

However, the decision, in the year 2000, by the Governor of the State of Zamfara to adopt the extended jurisdiction of the Shari'a to include criminal law cases, brought the nation to a serious crisis. Although the Governor claimed that he was acting according to the Constitution, it was clear that he was playing politics more than practicing religion. Section 262 of the 1979 Constitution provided for the application of the Shari'a Law, but the application, was as it had been in all the previous Constitutions, in relations matters of Islamic personal law, and not its criminal aspects.<sup>20</sup>

Consequently, they both conclude that the expansion of the *Shari'ah* application to cover criminal aspects by both the Zamfara State and other States that followed suit "was in conflict with the 'Nigerian' constitution and a violation of the spirit of Section 1 of the same Constitution."<sup>21</sup> Interestingly many Muslims disagree with the above perception that the expansion of the *Shari'ah* application violates certain provision of the Nigerian constitution. For example, Quadri argues that according to Section 277 (1) of the 1999 Constitution to the effect that the *Shari'ah* Court of Appeal of a state shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Law shows that the state Assembly has the powers to widen the jurisdiction of the *Shari'ah* court to include criminal matters.<sup>22</sup> This shows that both Muslims and Christian quote the same Nigerian Constitution either to support or oppose the rights of the Muslims to adjudicate according to the *Shari'ah* and using an act of parliament to amend or expand the jurisdiction of the *Shari'ah* application. One such constitutional provision usually quoted by the two sides but interpreted differently is that "every person shall be entitled to freedom of thought, conscience and religion...and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance."<sup>23</sup>

#### *Shari'ah Administration and the Law of Apostasy*

While another constitutional issue usually raised by Christians in Nigeria against the *Shari'ah* application is the penalty for apostasy, this is not really a legal issue in Nigeria since the codification of the *Shari'ah* which is in place on the Northern states of the federation that implements its criminal aspect does not include the penalty. This, in my view, is in line with the submission of Olosoto and Uthman who have concluded that it is untenable to regard apostasy as is usually treated by some Muslim scholars as a punishable crime under the penal laws of the *Shari'ah*.<sup>24</sup>

I argue that a thorough examination of the various *Shari'ah* texts on the issue of apostasy show that it is proper to expunge the penalty as it violates the declaration in the Qur'an that there is no compulsion in faith (Qur'an 2: 256). The *Shari'ah* also does not sanction the indiscriminate killing and destruction of the life and property of anybody because of the crime of apostasy as revealed by these texts. On the contrary, the '*illat al-qitāl* (justification for war or killing) of both apostates and non-Muslims according to the classical Hanafi Islamic jurists is *muḥārabah* (aggression) and not mere *kufr* (disbelief) or *irtidād* (apostasy).<sup>25</sup> It may be argued that the killing of a *murtadd* or the Muslim apostate who reverts to another religion is supported by the popular tradition that says "whosoever changes his religion, kill him." The full text of the Ḥadīth as reported by al-Bukhārī is as follows:

Some heretics (apostates) were brought to 'Alī, may Allah's pleasure be with him and he set them ablaze. Then the report came to Ibn Abbās and he said: if it were to be me I wouldn't have set them ablaze due to the prohibition of the Prophet (SAW): 'Do not punish (people) with the punishment of Allah.' I would have killed them due to the statement of the Prophet (SAW) that: 'Whoever changes his religion, kill him.'<sup>26</sup>

On the authority of 'Alī Ibn Abdillāh, on the authority of Sufyān who related through Ayyub through Ikrimah: That certainly Ali set a group of people ablaze and when the report came to Bin Abbās he said: If I were to be the one, I wouldn't have set them ablaze, because the Prophet (SAW) surely said: Do not punish with the punishment of Allah, I would have killed them as the Prophet (SAW) said: 'Whoever changes his religion, then kill him.'<sup>27</sup>

Abū Mūsā narrated:

That the Prophet (SAW) sent him to go to Yemen and later Mū'ādh bin Jabal was sent to join him. When Mū'ādh arrived Yemen, Abū Mūsā gave him a pillow/couch and asked him to sit. Meanwhile there was a man with Abū Mūsā who was tied. Mū'ādh asked: What is this? Abū Mūsā replied: He was a Jew who accepted Islam and then converted back to Judaism. Mū'ādh then replied: I will not sit down until he is killed. That is the ruling of Allah and His Messenger.<sup>28</sup>

On the authority of Mū'ādh who narrated that:

When the Prophet (SAW) sent him to Yemen, he said: Any man who backpedals from Islam should be summoned. If he returns, he should be left alone but if he refuses he should be killed. And any woman who backpedals from Islam should be summoned. If she returns, she should be left alone but if she refuses she should be killed.<sup>29</sup>

Notwithstanding the above popular tradition on the basis of which many Muslim jurists have upheld the death penalty for an apostate,<sup>30</sup> it is noteworthy that there is no record of the Prophet himself killing any single apostate. He only sanctioned the killing of only those apostates who committed felony and sedition in the Muslim community and this is the correct meaning of the above reported traditions as explained in other popular traditions on the killing of the apostate. One of such tradition is in fact reported by virtually all the six authentic collectors of traditions but the narration by al-Bukhārī is translated as follows:

From the authority of Ibn Mas'ūd, may Allah's pleasure be with him, who said: "The Apostle of Allah (SAW) said: The blood of a Muslim who believes that there is no God except Allah and that I am His apostle cannot be shed except in three cases: a life for a life (retaliation for murder), a married person who commits illegal sexual intercourse (adultery) and the one who forsakes his religion, separating himself from the congregation by fomenting dissension among the Muslim community."<sup>31</sup>

This tradition clearly shows that what is called the punishment for apostasy by Muslim scholars is in reality the punishment for terrorism, felony, arson and treason, known as *al-Ḥirābah* which is embedded in the penal laws of the *Sharī'ah*. This why in *Ṣaḥīḥ al-Bukhārī*, the chapter on *al-Ḥirābah* includes the tradition of Mālik ibn Anas on the case of a group of people who came to the Prophet Muḥammad (SAW) to accept Islam and asked him about their health. The Prophet (SAW) sent them to the shepherd of the livestock of Medina in the outskirt of the city to drink from camel milk until they recovered. After they did so, they killed the shepherd and fled. The Prophet sent some Companions to capture them. When they were brought before him, the Prophet punished them ordered that they should be killed.<sup>32</sup> Ibn 'Abbās also narrated a tradition concerning a group of *Ahl al-Kitāb* (People of the Book, which is the term for Jews and Christians) who violated their covenant with the Prophet. In return, he gave them the choice of death or the severe punishment as ordained by Almighty Allāh.<sup>33</sup> This is supported by different passages in the Qur'an that show that the punishment for apostasy is in the hereafter. Allah says:

How shall Allah guide those who rejected faith after they accepted it and bore witness that the Messenger was true and that clear sign had come to them? But Allah guides not a people unjust" Of such, the reward is that, on them rests the curse of Allah, of His angels and of all mankind; In that will they dwell; Nor will their punishment be lightened, nor respite be their lot; Except for those that repent after that and make amends, for verily Allah is oft-forgiving, most Merciful. But those who rejected faith after they accepted it and then go on adding to their defiance of faith, never will their repentance be accepted: For they are those who have gone astray. As to those who reject faith, and die rejecting, never would be accepted from any one of them such as much gold as the earth contains, though they should offer it for ransom. For such people is (in store) a penalty grievous and they will find no helpers. (3:86-91)

While commenting on the above passage, Ibn al-Kathīr explains that verses 86-89 were revealed because of Al-Ḥārith Bin Suwayd, a Christian who accepted Islam and later became an apostate. According to one version of the report he regretted and sent representatives to the Prophet in order to know whether he could return and the verses were revealed. According to another when these verses were revealed and they were read to him, Ibn Suwayd confirmed to the transmitter that he was saying the truth (i.e. that he, Bin Suwayd knew the truth and that he only decided to take falsehood) and had repented knowing that the Prophet was more truthful than him and Allah more truthful than all of them. He consequently came back to Islam.<sup>34</sup>

According to Al-Sābūnī, the verses as a whole referred to the Jews and the Christians who rejected Islam after the signs of the Prophet which they were expecting were clearly seen, just because the Prophet was not from among them.<sup>35</sup> Ibn al-Kathīr supports this interpretation quoting Ibn Abbās as saying: "They are people from Yemen, then Kindah."<sup>36</sup> In another passage, Allah says:

Anyone who after accepting faith in Allah, utters unbelief except under compulsion, His heart remaining firm in Allah, but such as open their breast to unbelief, on them is wrath from Allah and there will be a dreadful chastisement. That is because they love the life of this world better than the hereafter: And Allah will not guide those who reject faith. Those are they whose hearts, ears and eyes Allah has sealed up and they take no heed. Without doubt, in the hereafter they will be the losers. But verily thy Lord, to those who leave their homes after trials and persecutions and who thereafter strive and fight for the faith and patiently persevere, thy Lord, after all this is Oft-Forgiving Most Merciful (16:106 – 110).

Ibn al-Kathīr in his exegesis on these verses explains that Allah is talking about those who believed after conviction and later disbelieve, that they do so due to their preference for this world and the glittering things it contains above the hereafter. He adds that if one is forced to do so then it is pardonable. According to him, the verses were revealed because of Ammār Ibn Yāsir who was forced by the unbelievers in Makkah to disbelieve in the Prophet Muhammad (SAW), abuse him and praise their idols, which he did and he was spared. But to Ibn al-Kathīr, it is better for a Muslim to remain steadfast if he could persevere even if one is killed. He cited the cases of those who remained steadfast despite the fact that they were tortured like Bilāl who was tortured by his master because of his faith in one God before he was purchased and set free by AbūBakr, Ḥabīb Bin Zayd al-Ansārī who was tortured by Musaylimah al-Kadhhdhāb and Hudhayfah al-Suhaymī who was captured by the Romans and was taken to their Emperor, and was tortured but remained adamant on their faith.<sup>37</sup>

This shows the simplicity of Islam in respect of persecution of Muslims. Such Muslims can either remain steadfast and suffer the persecution or recant faith in Islam and accept unbelief verbally while their hearts remain committed to faith. It is only those who are pleased with disbelief in their hearts that are guilty of apostasy according to the passage. Allah says further on the question of apostasy:

They ask thee concerning fighting in the Prohibited month. Say: Fighting therein is a grave (offence): But graver is it in the sight of Allah to prevent access to the path of Allah, to deny Him, to prevent access to the Sacred Mosque, and drive out its members. Tumult and oppression are worse than slaughter. Nor will they cease fighting you until they turn you back from your faith if they can. And if any of you turns back from their faith and die in disbelief, their works will bear no fruit in this life and in the hereafter; they will be companions of the fire and will abide therein (2:217).

Ibn al-Kathīr comments that this verse was revealed to reassure the Prophet and the Muslims of the correctness of the action of the contingent under 'Abdullah Bin Jahsh who were accused by the *Kuffār* (unbelievers) in Mecca of waging war, killing and taking booties in two of the sacred months (i.e. the last day of Jumadā al-ūlā and first day of Rajab, two months of the Islamic lunar calendar). In the verse Allah declares that even if the Ibn Jahsh's contingent had committed any error, the errors of the *Kuffār* were more inimical and grievous as they denied Allah, prevented people access to the path and sacred house of Allah, al-Ka'bah and they tortured and persecuted believers. In other words these tumult and oppression are worse than killing.<sup>38</sup> Allah says:

Those who turn back as apostates after Guidance was clearly shown to them, Shaytān (the devil) has enticed them and buoyed them with false hopes. This is because they say to those who hate what God has revealed: We will obey you in part of (this) matter, but Allah knows their (inner) secrets (47:25-26).

Ibn al-Kathīr in his discussion of these verses confirms that this attitude of reverting from Islam is a characteristic of the hypocrites.<sup>39</sup> This I argue is a very important point that supports my argument that *Riddah* is not a punishable crime in Islam unless it is accompanied by felony or treason. This is because although, *Nifāq* (hypocrisy) that is mentioned by Ibn al-Kathīr is a grievous sin in Islam, it does not attract any worldly punishment. About hypocrites, Allah says: "They have made their oaths a screen (for their hypocrisy). Thus they hinder (men) from the path of Allah. Verily, evil is what they used to do" (63:2). The reason for this action is that they are in playing hide and seek game with the Muslims (4:139), engaging in deception (4:142) and in secret agreement with the enemies of Islam (4:139), but because they come to the mosque and observe *Salāh*, (compulsory prayers), engage in *Siyām* (compulsory fast in the month of Ramadan), pay *Zakāh* (compulsory alms) and even at times, participate in military *Jihād*, it became a sin to kill them. According to Ibn Abbās, the Prophet did not kill the hypocrites because of diplomatic reasons.<sup>40</sup>

A critical review of all these verses therefore reveals that though *Riddah* is a grievous sin, it is not a punishable crime unless it is accompanied by felony and sedition. The alleged consensus of opinions among the Muslim Jurists and scholars that the punishment for *Riddah* is death is baseless. Hence Ibn Rajab Al-Ḥanbalī has shown graphically that it is only whoever combines the sin of apostasy with *Ḥirābah* aggression or brigandage that is guilty of death penalty as confirmed by the Ḥadīth of 'Āishah reported by Al-Nasāī, in which the Prophet (SAW) says:

The blood of a Muslim cannot be lawfully shed except with one of the following behaviours: an adulterer who should be stoned, a man who killed intentionally and should be killed and a man, who went out of



Islam and then terrorizes Allah and His Apostle, then, he should be killed or crucified or banished out of the land

He also quotes the Abū Dāwūd's narration of the above the Ḥadīth of 'Āishah as follows:

The blood of a Muslim who bears testimony that there is no deity worthy of worship and that Muhammad is Apostle of Allah cannot be lawfully shed except with one of the following three things: Adultery after marriage, then he should be stoned, a man who set out as one who declare war on Allah and His Apostle, then he should either be killed or crucified or banished from the land, or a man who killed a soul and then he should be killed.

Ibn Rajab concludes that the Prophet's statement "a man who went out of Islam" in the first narration could mean somebody who makes a declaration of war against Islam among the apostates, so whoever commits apostasy and declares war against the state, the judgment of death applies to him.<sup>41</sup> The perception of apostasy as a punishable crime that attracts a fixed punishable death penalty in Islamic Law is a total violation of the above traditions of the Prophet (SAW). It also violates the Islamic concept of faith.

Faith in Islam though innate to a person, as a person is born a Muslim according to Islamic teachings, is not the birth right of any person. Faith in Islam is a function of loving Allah so much that all a Muslim actions and constitutes *Jihād* whose sole aim is pleasing Allah alone.<sup>42</sup> Hence a person even though born a Muslim may technically according to the *Sharī'ah* at any time cease being a Muslim the moment his/her actions stop pleasing Allah just as non-Muslims who have 'reverted' (Since according to Islamic teachings, they were originally born Muslims) to Islam, can at any time return to the innate and natural religion, Islam once he/she professes it and starts pleasing Allah alone in all actions.

By implication, a person remains a Muslim in the truest sense of the word as long as all his actions and activities are done to win the pleasure of Allah. When a person's actions and activities cease to be done for the sole aim of pleasing Allah, the person in reality ceases to be a Muslim. It is in this context that Islam teaches that there is no compulsion in faith (2:208, 217, 256, 10:99-100 and 88:22-24).

It is no wonder that in the Qur'anic passages above, the punishment for apostasy resides in Allah who has chosen to punish people who apostatize after they die on the Day of Judgment (2:217 Allah also specifically warns the Prophet Muhammad (SAW) from enforcing Islam on people or punishing the apostates since their punishment is with Allah (88:21-26). This perhaps informed Prophet's attitudes to apostates and it is why the position of the Ḥanafī School of Law, which insists that the apostate is killed under the Islamic law because of "averting his aggression and not because of his apostasy" is to me, the most correct position.<sup>43</sup>

#### Conclusion

Though there are many constitutional issues hovering round the practice and administration of the *Sharī'ah* in Nigeria, recourse may have to be made to the judiciary to resolve them. However the administration of the *Sharī'ah* since the re-introduction of the criminal aspects in 2000 maybe be said to be compliant on the issue of freedom of religion with the expulsion of the so-called law of apostasy, which indeed is the law of sedition and felony. As for the debate over whether Nigeria a secular or multi-religious state, resolution of this calls for a negotiated settlement with all members of the religious and national groups that make up the country.

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