



APPLICATION OF THE LAW OF *AL-KHAMR* IN
NORTHERN NIGERIA: AN ANALYSIS OF PENAL
CODE OF NORTHERN NIGERIA AND *SHARĪ'AH*
PENAL CODE

BY

ABBAS ALIYU

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requirement for the degree of Master of Comparative
Law

Ahmad Ibrahim Kulliyyah of Laws
International Islamic University
Malaysia

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ABSTRACT

This study is to examine the issue of application of the law of *al-khamr* in Northern Nigerian Penal Code and the *Shari'ah* Penal Code introduced in the 1999 with a brief history of *Shari'ah* in Nigeria from the pre-colonial era to date. The study will also discuss on the issue of the offence of *Shurb al-khamr* and implementation of *Shari'ah* in the year 1999/2000 its justification and problems of implementation under 1999 constitution of the federal republic of Nigeria. The approach used in this research is analytical the materials are obtained and analyzed by putting side by side the references regarding the implementation of the law of *al-khamr* in the two systems – *Shari'ah* law of *al-khamr* reintroduced in Northern Nigeria and law of *al-khamr* in the Penal Code of Northern Nigeria. The study revealed that the full implementation of *Shari'ah* including its penal aspect was maintained in pre-colonial period especially under the Sokoto caliphate emerged out of the *jihad* of Sheikh Othman Ibn Fodio. In the colonization period the application of the law of *al-khamr* was drastically weakened, but with the reintroduction of *Shari'ah* in 1999 the implementation of the law of *al-khamr* has been maintained including the punishment for consumption and dealing in liquor. The study further revealed that the legal problems of the implementation are due to the controversial nature of the constitution of the federal republic of Nigeria, while the social problems of the implementation were due to the ignorance of the people from both the Christians and ignorant Muslims in Nigeria. The study is purposely a contribution academically towards the implementation of *Shari'ah* in Nigeria. It will, in addition, serve as a solution to the problems of implementation of *Shari'ah* in Nigeria.

ملخص البحث

هذه الرسالة ستبحث عن قضية تطبيق قانون الخمر من قانون الجزاء لشمال نيجيريا و قانون العقوبات للشريعة التي طبقت في عام 1999 الميلادي بعد تقديم شيء من تاريخ الشريعة في نيجيريا من قبل الاستعمار الي اليوم. مما تناولته الرسالة بيان جريمة شرب الخمر وبيان تطبيق قانون العقوبات للشريعة و أحقيته, ومناسبته, ومشاكل تطبيق الشريعة تحت دستور دولة نيجيريا لعام 1999 م. والدراسة التحليلية هي الطريقة المتبعة في الرسالة بجمع النصوص المتعلقة بتطبيق الشريعة والقيام بشرحها واخراج ماتضمنته من آثار في تطبيق قانون الخمر في شمال نيجيريا. ودلت الرسالة علي أنه كان تطبيقا تاما للشريعة قبل الاستعمار وخصوصا في دولة صوكتوا التي أسست نتيجة جهاد الشيخ عثمان بن فودي رحمه الله وفي فترة الاستعمار ضعف تطبيق قانون الخمر, لكن لما تم تطبيق الشريعة في عام 1999 م. صار قانون الخمر يطبق تطبيقا تاما باقامة الحد علي الشاربين وتعزير المتعامل في الخمر بما يستحق. ودلت الرسالة أيضا أن المشاكل القانونية التي يعانيها عمل تطبيق الشريعة كانت نتيجة طبيعة دستور نيجيريا المثيرة للشكوك, والمشاكل الاجتماعية كانت نتيجة الجهل من قبل نيجيرين مسيحين وسفهاء المسلمين. والهدف في الرسالة المساهمة العلمية لحسن تطبيق الشريعة في نيجيريا, و المشاركة الطيبة في حل مشاكل تطبيق الشريعة في نيجيريا.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Law.

.....
Farid Sufian Shuaib
Department of Public Law
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Law.

.....
Hamid Jusoh
Department of Islamic Law
Examiner

This dissertation was submitted to Department of Public Law and is accepted as a partial fulfilment of the requirements for the degree of Master of Comparative Law.

.....
Hunud Abia Kadouf
Head, Department of
Public Law

This dissertation was submitted to the Ahmad Ibrahim Kulliyah of Laws and is accepted as a partial fulfilment of the requirements for the degree of Master of Comparative Law.

.....
Mohd Akram Shair Mohamad
Dean, Ahmad Ibrahim
Kulliyah of Laws

DECLARATION

I here by declare that this dissertation is the results of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for my other degree at IIUM or other institutions.

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SHARĪ‘AH PENAL CODE**

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This dissertation is dedicated to my Parents for bringing me up from the childhood and for their support towards my education. And to my wife Hauwa'u Muhammad who has missed me and continued to taking care of my children until today, and also to my children Asmāu and Abdussamad, for their patience on missing me throughout the period of this study. Therefore, I ask Almighty Allah to reward them all, in this life and hereafter amen.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The word *ḥudūd* precisely is the plural of *ḥadd* which literally means a boundary, limitation. But technically as far as Islamic criminal law is concerned, it refers to fixed punishments prescribed in the Holy Quran and Sunnah of the Prophet Peace and blessing of Allah be upon him as a right of Allah for a crime committed.

Ḥudūd are unalterable in nature, be it increased or decreased because these offences affect social existence of human being in general. The crimes termed as ‘*Ḥudūd* offences’ are: adultery, false accusation of adultery, theft, drinking intoxicating liquor, shedding of blood, Apostasy, and Rebellion. Although *Qaṣās* offences affect social existence and their punishment is prescribed, but they are not included in the term because they are considered to be rights of individual. Whereas *ḥudūd* offences are considered to be the rights of Almighty Allah and no one is empowered to make any change in them.¹

Al-khamr or wine-drinking is one of the *ḥudūd* offences, taking of an alcohol or any intoxicating drug used is forbidden in Islam. The word for an intoxicant used in the Quran is *al-khamr* the meaning of which is derived from ‘*khamara*’ meaning the covered or veiled thing. So it will mean any fermented juice of grape, barley, dates, honey or any other thing which may make one intoxicated after drinking. *Al-khamr* is considered as the mother of all vices (*Umm al-khabāith*) due to the fact that, one who is in state of intoxication, is ready to commit any crime.

¹ Tauqir Muhammad Khan & M.H. Syed, *Criminal law in Islam*, Pentagon press, 2007, at 342.

The objective of Islamic criminal law is to control the commission of crimes, so as to protect the rights and interests of the public and to ensure peace in the society. Islamic criminal law has identified various crimes and has provided deterrent, reformatory, retaliative and other types of punishment for them in order to maintain peace and security in the society, which will eventually end in reforming the offenders' bad behaviour. In the absence of an effective criminal justice law, the entire social structure of a society will be standing on a very weak footing. Mere prohibition of an offence by the Government or any other power does not guarantee its compliance by the public. Instead it is the fear of the vision of Allah first and foremost, and then the punishments that will be enforced upon the offenders guarantee the effectiveness of such prohibition.

Precisely, to conduct a research on the application of the law of *al-khamr* in Northern Nigeria is very important, because the findings of the research will be very beneficial to the Muslims particularly in Nigeria and the non Muslims residing in Nigeria. It will be useful to Muslims as far as *Shari'ah* injunctions are concerned regarding the implementation of the law of *al-khamr* in Northern Nigeria and the rights of non Muslims residing in *Shari'ah* states. Similarly, the research will be useful to non Muslims in the sense that, they will know what is *Shari'ah* legal system and the rights of Muslims with whom they reside and eventually there will be a sort of understanding between the two.

1.2 STATEMENT OF THE RESEARCH PROBLEM

The relevance of *Shari'ah* to the life of individual Muslim in particular and the community in general can not be over emphasized. For it provides the methods that Muslims should adhere to, in order to live happily and comfortably both here and

hereafter. Therefore Muslims must submit themselves totally to this divine rules and regulations spiritually, morally, socially, politically and educationally.

On 27/10/1999, the Zamfara State government announced and declared the implementation of Islamic law in their region². After few months, an attempt was also made by some other states in the country to implement the same system as it was done by Zamfara State³. The most important part that these states stressed on is the codification of the aspects of *al-ḥudūd and qaṣās* penalties. Unfortunately this attempt was seen as unjustifiable by some people and was made basis for causing mayhem to law abiding and innocent people. It also generated a lot of religious crisis and riots which resulted in lost of life and property in some states of the Federation.

The research will attempt to provide answers to such questions as:

1. What is the historical background of *Sharī'ah* legal system in Northern Nigeria?
2. How was the application of the law of *al-khamr* during and after Colonial rule?
3. What is the actual reintroduction of *Sharī'ah* which came into existence 1999?
4. What are the problems of the implementation of *Sharī'ah* with reference to the law of *al-khamr*?
5. What are the possible solutions of the problems of the implementation?

² Umar 'Abdul-Qādir, "Legality and Problems of Implementation of *Sharī'ah* Legal System Under 1999 Constitution of Nigeria", (1st Degree Thesis Ahmadu Bello University, Zaria, 2002), at 65.

³ These States are: Zamfara, Kano, Kaduna, Borno, Sokoto, Yobe, Bauchi, Katsina, Niger, Kebbi, Jigawa and Gombe

1.3 THE OBJECTIVES OF THE PROPOSED DISSERTATION

The objective of this research is to compare between the application of the *Sharī'ah* legal system (in particular the law of *al-khamr*) in the Northern Nigeria and the Nigerian Penal Code law, which was actually brought by the British colonizers as a law for the Muslims and Non- Muslims living in Northern Nigeria.

The research also will explain the justification of the implementation of the law of *al-khamr* in particular and *Sharī'ah* legal system in general. Also it will highlight the problems of implementation of *Sharī'ah* in the 1999 Constitution of the federal republic of Nigeria.

Finally, some recommendations would be proposed that, if observed the religious crisis that are very rampant in Nigeria, would be minimized if not avoided completely.

1.4 HYPOTHESIS

There is difference between the application of the law of *al-khamr* in Northern Nigeria Penal Code and the application of the law of *al-khamr* in *Sharī'ah* Penal Codes of Northern Nigeria. The implementation of *Sharī'ah* in Northern Nigeria is purely constitutional. There are problems of the implementation of *Sharī'ah* under the 1999 constitution of the federal republic of Nigeria. Therefore, there is inconsistency between the constitution of Nigeria, the Penal Code of Northern Nigeria and the *Sharī'ah* Penal Codes of Northern Nigeria, the study is with reference to the application of the law of *al-khamr* in Northern Nigeria.

1.5 LITERATURE REVIEW

Many books, articles, and thesis have been written on the area of this research. The materials are relevant to the research, as would be seen in the explanation as follows:

The references that are reviewed in this literature review are of three categories. Firstly, the references that discussed in details the offence of wine drinking; these are the books of classical jurists who always discuss on the offence of wine drinking among the *hudūd* offences. The second category of references is those references that discuss on the implementation of Sharī‘ah in Nigeria; While the third category is the references that discuss on the problem of implementation of *Sharī‘ah* in Nigeria. The references are categorized into three because the research itself has three main categories which comprise the offence of *Shurb al-khamr* (wine drinking), implementation of *Sharī‘ah* in Nigeria and the problem of implementation.

The classical jurists are on top in the list of authors who have discussed the issue of *al-khamr* in all perspectives. They left no stone un turned regarding the offence of *Shurb al-khamr* the jurists are:

Abubakar Bin Mas‘ūd Al-kāsānī Al-Ḥanafī, *badāi‘u Ṣanāi‘u*⁴ the author discussed on the offence of wine-drinking very widely such as definitions, conditions and the elements. The author differs from other authors and differentiates between shrub (drinking wine) and the intoxication. On Malik school of thought there is:

Abdu Al-Bāqī Bin Yusuf Al-zzurqānī Al-miṣrī “Sharḥ Al-zurqānī ‘Alā al-Mukhtaṣar al-Khalil Al-mālikī”⁵ the author extensively explained the offence he discussed the issue of punishment and how the offence can be established as well as many issues concerning the crime.

⁴ Al-kāsānī, *Badāi‘u Ṣanāi‘u*, Al-maktabatu al-‘ilmiyyah, 1997, 9: at 249.

⁵ Al-zurqānī, *Sharhu al-zurqānī*, Dār Al- Kutubil al-‘Ilmiyyah, 2002, 8: at 15.

Aliyu Bin Sulaiman Al-mardāwī “Al-inṣāf fī ma‘rifati al-rājiḥ min al-khilāf ‘alā mazhabi Imam Aḥmad” he discussed extensively on the procedure of executing hadd punishment in the Hambali school of thought. The last of classical jurists is the Imam Shāfi‘ī school of thought:

Abū Yahya Zakariyyah Al-anṣārī “Asnā al-madālib sharḥ Rauḍu Al-dālib”⁶ the author explained widely on the ḥudūd offences on many perspectives. Including *shurbul al-khamr* the historical background and the various stages went through by v in the process of prohibiting the wine.

All the above mentioned classical books are relevant to my research when discussing on the offence of *Shurb al-khamr* in chapter three. As regard to the area of study left by the classical jurists, first of all, the classical jurists discussed on the issue of the offence of wine drinking generally without restricting to a particular location or time but the current study is restricted to Northern Nigeria and the contemporary time. In addition to that, the study will comprise the problems of implementation of *Sharī‘ah* due to the existence of some other laws beside *Sharī‘ah* legal system in this particular time. On contrary to that, there were no problems of implementation at the era of classical jurists for there were no other laws beside *Sharī‘ah* as such they did not discuss on it.

‘Abdul Qādir ‘Audah is among the contemporary scholars we have, who in his famous book “The criminal law of Islam” discussed vividly on the issue of *ḥudūd* crimes in general among which, is the offence of wine drinking. The author explained the prohibition of the offence maintaining that it entails any kind of intoxicant whether in a small quantity or in large quantity. He also talked on the punishment of the offence up holding that it was established by the consensus opinion of the Prophet’s

⁶ Abū Yahya Zakariyyah Al-Anṣārī, *al-majmū‘u*, Dār ihyāa turāth al-‘Arabī, 2001,8: at 289.

companions may Allah be pleased with them all amen⁷. This part of the work is relevant to my research, when discussing on the offence of *Shurb al-khamr* in chapter three. Further more he discussed on the issue of criminal accountability of the intoxicated person according to the opinions of Islamic Jurists as opposed to modern laws.⁸

Abdul Al-Raḥman I Doi, is one of the contemporary Scholars who have contributed immensely regarding Sharī'ah legal system in general and the *ḥudūd* offences in particular in his book "Sharī'ah the Islamic Law" the author discussed on the definition of *al-khamr* and its gradual prohibition. He emphasized on the gravity of the offence as well as the side-effects of wine. Finally, he discussed on the issue of punishment of wine and few words on proof of the offence. All these are relevant to the research especially chapter three which deals with the offence of wine drinking.⁹

Ahmad Fathī Baḥanasī, "Al-masūliyyah al-janāiyyah fī al- fiq al-Islāmī" The author discussed extensively on the intoxication and accountability of the intoxicated person highlighting the preferable view among the juristic opinions. He discussed on many other kind of intoxicants and opinions of jurists regarding them, where the author concluded that, any kind of intoxicant is prohibited be it liquid or dried substance. The gaps left by the above contemporary authors are the area of the application and the problems of implementation of *Sharī'ah* under the Constitution of the federal republic of Nigeria, the areas that will all be covered by the current study.

‘Abdulmalik Bappa, "A brief history of Sharī'ah in the defunct Northern Nigeria"¹⁰: In his book he discussed many issues regarding the conspiracy against

⁷ Abdul Qādir 'A. *Criminal Law of Islam*, KitabBhavan, 1977/1999, 1: at 135 & 3: at 45-47.

⁸ Ibid. 2: at 314-316.

⁹ Abdu Al-Raḥman I Doi, *Sharī'ah the Islamic Law*, A.S. NoorDeen, 2002, at 263-265.

¹⁰ ‘Abdulmalik Bappa, *A brief history of Sharī'ah in the defunct Northern Nigeria*, Jos University Press Ltd, 1988, at 15.

Shari'ah in Northern Nigeria by the British. His discussion included the Suppression of Arabic Education by the British colonizers, how *Shari'ah* legal system was abrogated by them and the cessation of Islamic criminal laws in Northern Nigeria. Among the important topics he discussed were the importance of *Shari'ah* in building the society, the obligation of applying *Shari'ah* and a call to an Islamic authority. This book is considered to be one of the main references in this research, especially when dealing with the history of the *Shari'ah* in Northern Nigeria

Bashir Adam Aliyu “practical approach to harmonization of *Shari'ah* and civil law: a critical analysis of the Nigerian experience” the writer mentioned the historical background and the various stages went through by *Shari'ah* in the Nigerian constitution. The article is relevant to the research especially chapter two which deals with *Shari'ah* and the Nigerian legal system.

Husaini Abdu, “An Appraisal of the implementation of *Shari'ah* Islamic law in Zamfara State”¹¹ in his research he deals with the implementation of Islamic criminal law in Zamfara State and the difference between the *Shari'ah* Penal Code that is implemented in Zamfara and the Northern Nigeria Penal Code¹². In his research some of the cases that were brought before the *Shari'ah* Court in Zamfara State are mentioned and commented upon. It can be said that this work in its approach is different from Abdulmalik Bappa. The former dealt with the history of *Shari'ah* and its application in the past, while the later deals with it in the present days of Nigeria. The above references on *Shari'ah* focus on the area of the implementation of *Shari'ah* in general while the current study focuses on the area of the application of *Shari'ah* with reference to law of *al-khamr* in Northern Nigeria and the discussion extensively

¹¹ Husaini ‘Abdu, “An Appraisal of the implementation of *Shari'ah* Islamic law in Zamfara State”, (1st degree thesis, Ahmadu Bello University, 2004), at 112.

¹² Ibid.

on the offence *Shurb al-khamr* (wine drinking) both in *Sharī‘ah* and Penal Codes of Northern Nigeria.

Ibn ‘Āshur, “Treatise on Maqāṣid al- *Sharī‘ah*” the author explained the general objectives of *Sharī‘ah* and the objectives of penalties in particular where he maintained that the objectives of penalties are: reformation of the offender, satisfaction of the victim and deterring the possible imitator.¹³ He discussed vividly on the said objectives that is, the objectives of *Sharī‘ah* in general and that of penalties in particular. The work is relevant to the research on the issue of *Sharī‘ah* implementation in general and justification of the implementation of the law of *al-khamr* in particular. The book is also beneficial to me generally for better understanding of *Sharī‘ah* in Toto.

Muhammad Rābiu Ahmad, “Constitutional Limitations to Islamic criminal justice system in Nigeria¹⁴” the writer concentrates on the constitutional limitations, the legitimacy of the *Sharī‘ah* legal system in the eyes of Nigerian Constitution. What are the limitations in applying the *Sharī‘ah* legal system according to federal constitution¹⁵? The approach adopted in this research is found to be very similar to that of Abdulmalik Bappa. The thesis deals with the history of *Sharī‘ah* in the past and today. Furthermore it looks at the responses and conspiracy of the Nigerian Non-Muslim against the *Sharī‘ah* legal system.

Obilade, “The Nigerian legal system” the book was very popular especially in Nigeria and deserved to be as far as Nigerian legal system is concerned. The author discussed extensively on the Laws and legal system in general, he divided the contents

¹³ Ibn ‘Āshur, *Treatise on Maqāṣid al- Sharī‘ah*, International Institute of Islamic thought, 1946/2006, at 330-334.

¹⁴ Muḥammad Rābi‘u Aḥmad, “Constitutional Limitations to Islamic Criminal justice system in Nigeria ” (1st degree thesis, Aḥmadu Bello University, 2005).

¹⁵ *Ibid.* at 71-95.

of the book into four parts as follows: part one, an introduction, part two was on, outline of the history of legal system of Nigeria while part three was on the Sources of Nigerian laws and lastly part four on the administration of justice. The book is very important reference as far as this research is concerned because the history of *Sharī'ah* in Nigeria will not be comprehensive without taking into consideration the history of Nigerian legal system. For, on many occasions the two run concurrently. The relevant part to my research is the part two which deals with the history of legal system and part four which deals with the administration of justice especially in *Sharī'ah* Courts of appeal and Area Courts. The areas left by the above references and that are to be touched by the current study are; the application of the law of *al-khamr* in Northern Nigeria by conducting an analysis of *Sharī'ah* and Penal Codes of Northern Nigeria and the area of the offence of *Shurb al-khamr* in general.

‘Umar Abdul-Qādir, in “Legality and Problems of Implementation of *Sharī'ah* Legal System under 1999 Constitution of the Federal Republic of Nigeria”¹⁶ it also analyses the implementation of the *Sharī'ah* legal system in Northern Nigeria. According to him the implementation of the *Sharī'ah* legal system in Northern Nigeria is in line with the Nigerian constitution and it does not violate any part of it therefore, the application of *Sharī'ah* legal system for Muslims in their areas is legitimate. According to his opinion, there is a great difference between the adaptation of *Sharī'ah* and the adaptation of Islamic criminal law. *Sharī'ah* is a system that is legislated by Allah as the best way of life. It contains all kinds of laws including Islamic criminal law. Therefore, it can be said that the Islamic criminal law is nothing but a small part of *Sharī'ah*. The writer in his research in order to buttress and support this principle he provided a very good distinction between the two to support his

¹⁶ ‘Umar ‘Abdul-Qādir, n. 2

point, as he said this should be the fundamental distinction between these two, because by this we can judge each of them according to its position or condition¹⁷ In this thesis the writer discusses in detail the issue of *Sharī'ah* implementation in Zamfara State and other States that are involved. In his writing he covers many issues related to *Sharī'ah* in various part of the country, especially the criminal law which comprises *hudūd*, *Qaṣāṣ* and *ta'zir* offences and their penalties. The main difference between 'Umar Abdul-Qādir and this research is that the former dealt with *Sharī'ah* in the present days of Nigeria in a very concise method; in another word he gave brief information about codified *Sharī'ah* laws in the north. In this research the same method will be conducted in dealing with the history of *Sharī'ah* in the past. But when analyzing *Sharī'ah* application in present, another method will be formulated. This research is planed to be focusing on the aspect of law of *al-khamr* codified in Northern Nigeria.

Dr. Ibrahim Sulaiman, "*Sharī'ah* restoration in Nigeria: the dynamic and the process"¹⁸. The writer in his article supports the *Sharī'ah* Legal System, even though he states two problems to be the main problems facing *Sharī'ah* implementation in Northern Nigeria¹⁹, which for some reasons I am not quite agree with him on one of the two problems he mentioned. According to him these problems have to do with economy and ignorance. But according to my opinion money is not an obstacle toward application of the *Sharī'ah* Legal System. This is simply because *Sharī'ah* used to be applied during the Prophet's ε time and it worked, knowing that most of the people in those days were very poor, but notwithstanding the prophet and his companions have

¹⁷ Ibid. at 80.

¹⁸ Ibrahim Sulaiman, "*Sharī'ah* restoration in Nigeria: the dynamic and the process" (*A paper delivered in the international conference on Sharī'ah*, held at common wealth Institute, London, 14 April, 2001), organized by: Nigerian Muslim Forum UK.

¹⁹ Ibid. at 4 -5.

established a complete *Sharī'ah* legal system. As regard to the second problem mentioned by him, that is the issue of ignorance, if we look at the nature and situation of the Nigeria I will strictly agree with him on that.

Degel 2007, vol. vii, the journal of the faculty of Arts and Islamic studies, published by 'Uthman Bin fodio University, Sokoto, Nigeria. Some of the articles discussed about the Sokoto caliphate literature in the era of globalization, the role of sheikh 'Uthman Bin Fodio and his followers on the establishment of Sokoto caliphate, *Sharī'ah* and good governance in Nigeria and also social-cultural life of the Muslim peoples in Zamfara state of Northern Nigeria. The above references discussed on the issue of *Sharī'ah* implementation in Nigeria generally while the current study will specifically discuss on the application of the law of *al-khamr* in Northern Nigeria and the offence of wine drinking in both *Sharī'ah* and Penal Codes of Northern Nigeria.

The commentaries of the Holy Quran such as Tafsir Ibn Kathir, English commentary regarding the verses prohibiting wine-drinking and prophetic traditions on that would be used for better understanding.

1.6 SCOPE AND LIMITATIONS OF THE RESEARCH

The research will mainly cover the application of the law of *al-khamr* in Northern Nigeria highlighting the problems and prospects. It also covers a brief history of the *Sharī'ah* in Nigeria since the pre-colonial period to date. It also covers the discussion vividly on the offence of *Shurb al-khamr* and codification of Islamic criminal law in the year 1999/2000 its justification and problems of implementation under the 1999 Constitution of the Federal Republic of Nigeria. All these with reference to laws regarding the offence of *Shurb al-khamr*, therefore the rest of the *ḥudūd* offences, are not included, unless where necessary for proper understanding.