



LEGAL AND ADMINISTRATIVE FRAMEWORK ON
THE ENFORCEMENT OF *SHARĪ'AH* PENAL LAW BY
THE POLICE IN NIGERIA

BY

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ABSTRACT

Nigeria is a Federal state with a central Federal Government and 36 federating units, each of which is constitutionally empowered to make laws subject to the extent permitted by the constitution. In line with the powers conferred on them about 12 States in Northern part of Nigeria about a decade ago enacted legislations introducing *Shari'ah* Penal Laws into their domains. Meanwhile *Shari'ah* Law is a residual matter for States while the Police that enforce all laws is a federal agency. The enforcement of the *Shari'ah* Penal System is therefore bound to face some legal and administrative challenges. This research as such seeks to justify the introduction of *Shari'ah* Penal Law in Nigeria and argues that the Police as an institution must take responsibility for the enforcement of *Shari'ah* penal law. In furtherance of the above, this research analyses the Constitution of the Federal Republic of Nigeria, the Police Act and all relevant laws. In appropriate cases, references have been made into literature on law and Policing, not forgetting observations and experience of the researcher as a serving Police Officer. This research finds that the Nigeria Police shoulder a lot of responsibility in the enforcement of all laws in Nigeria including *Shari'ah* but is dwarfed by gargantuan legal and administrative problems which are both internal and external to it. Another critical finding of our study is that a centralized police in a Federal State like Nigeria limits the power of the federating units to enforce their own laws. Unfortunately our study has shown that multiple policing is a remote possibility in Nigeria. Accordingly devolution of powers to State Police Commands has been recommended as a practicable solution to lift the police.

ملخص البحث

إن دولة نيجيريا دولة جمهورية فدرالية، وتتكون من ستة وثلاثين ولاية التي تمثل وحداتها الفدرالية، وتمنح الدستور الفدرالي كل من هذه الولايات القوة والحرية لوضع القوانين إلى الحدود المسموح بها في الدستور الفدرالي. وبناء على هذه القوة الممنوحة في الدستور فقد عمدت اثنا عشرة من الولايات الشمالية إلى وضع التشريعات لتطبيق أحكام حدود الشريعة الاسلامية و الجنايات في مناطقها منذ العقد الماضي، ولكن المشكلة أن حدود الشريعة الاسلامية لاتعتبر من القوانين الفدرالية، مع أن الشرطة المكلفة بتطبيق وتنفيذ جميع القوانين في نيجيريا تعتبر وكالة فدرالية. وبالتالي، الأمر الذي جعل تطبيق نظام حدود الشريعة الاسلامية في هذه الولايات يواجه تحديات قانونية وإدارية. ونظرا لذلك، فإن هذا البحث يسعى لتبرير وضع نظام حدود الشريعة الاسلامية و الجنايات في هذه الولايات النيجيرية، كما يثبت بأنه من مسؤولية الشرطة كمؤسسة مكلفة بتطبيق جميع القوانين في البلد أن تقوم بتطبيق وتنفيذ أحكام الجنايات في الشريعة الاسلامية في هذه الولايات. وقد اعتمد الباحث في هذا الصدد بالمواد الموضوعة في دستور الجمهورية الفدرالية النيجيرية وقانون الشرطة وجميع القوانين ذات الصلة، كما اعتمد على كتب القانون والشرطة أثناء المناقشة في الحالات المناسبة، كما دعم رأيه بملاحظات استقاما من تجربة كضابط شرطي. ولقد توصل الباحث إلي أن من مسؤولية الشرطة النيجيرية أن تتكفل بتطبيق جميع القوانين في الدولة بما في ذلك حدود الشريعة الاسلامية، ولكن يعيقها عن ذلك المشاكل القانونية والإدارية الداخلية منها والخارجية. كما استنتج الباحث، أن نظام الشرطة المركزية في الدولة الفدرالية مثل نيجيريا يمثل العائق أمام وحداتها الفدرالية في تطبيق قوانينها الخاصة بها. أن تعددية الشرطة هي الحل الوحيد لهذه المشكلة، وعلاوة على ذلك فإن الباحث يوصى بتفويض صلاحيات أوامر الشرطة إلى الولايات كحل عملي لهذه المشكلة.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Supreme Court Ordinance No 3 of 1863
Zamfara State Hisbah Commission Law
Zamfara State *Sharia* Penal Code

LIST OF ABBREVIATIONS

AC	Appeal Cases
All FWLR	All Federation Weekly Law Reports
All NLR	All Nigeria Law Reports
All ER	All England Reports
COP	Commissioner of Police
CPA	Criminal Procedure Act
CAP	Chapter
CAW	Court of Appeal Western Nigeria
CPC	Criminal Procedure Code CR
CR App R	Criminal Appeal Report
DPP	Director of Public Prosecution
EFCC	Economic and Financial Crimes Commission
FRN	Federal Republic of Nigeria
FSC	Federal Supreme Court
FWLR	Federation Weekly Law Reports
JSC	Justice of Supreme Court
JCA	Justice Court of Appeal
IGP	Inspector General of Police
IMB	International Merchant Bank
INEC	Independent National Electoral Commission.
LJKB	Law Journal of King's Bench
LR	Law Reports
LFN	Laws of the Federation of Nigeria
NCLR.	Nigeria Criminal Law Reports
NAI	National Archives Ibadan
NCR	Nigeria Criminal Reports
NLR	Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NRNLR	Northern Region of Nigeria Law Reports
NWLR	Nigerian Weekly Law Reports
QLRN.	Quarterly Law Reports of Nigeria
SC	Supreme Court
SSS	State Security Service
SCM	Supreme Court Monthly
SCNJ	Supreme Court of Nigeria Judgment
SCNLR	Supreme Court of Nigeria Law Reports
SCRA	Supreme Court Report Annotated (Philippines)
UAC	United African Company
USC	United States Supreme Court
WACA	West African Court of Appeal
WLR	Weekly Law Reports
WNLR	Western Nigeria Law Reports
WRN	Western Region of Nigeria

CHAPTER ONE

OVERVIEW OF THE STUDY

1.1 BACKGROUND

Nigeria Police force is the main Law enforcement agency in the country. It is a federal agency. A specific law, namely the Police Act of 1967 specifies specific powers and duties of the Police in enforcing the law. Meanwhile, the re-introduction of *Sharī'ah* Penal Law to Northern Nigeria in 2000¹ by the Zamfara State government was greeted with wide acceptance among the Muslims. Although there were pockets of protests in the country,² many Nigerians believed that the *Sharī'ah* Penal Law is the only to several social malaises that have eaten deep to the fabrics of the country.³ Little wonder then that eleven other states followed the Zamfara State's example in quick succession.⁴

However, the proponents of the *Sharī'ah* Penal Law observed that one of the obstacles confronting it is the inability of Nigeria Police Force to legally enforce the law.⁵ Since a decade of re-introduction of *Sharī'ah* Penal Law in Nigeria only few cases were decided despite its existence in Nigerian legal system.⁶ This emanates from

¹ *Sharī'ah* Penal Code Law no 10 of 2000 and *Sharī'ah* Criminal Procedure Code law (law no 18 2000).

² Brandon Kendhammer., *The Sharī'ah Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies* (Ohio: Ohio University, June 2012) at. 9.

³ Philip O., & Umaru, M.J.. "Introduction to Chapter 3 - *Sharī'ah* Debates in Africa", at. 10. Retrieved from <www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_3_3_chapter_3_part_II.pdf>, Accessed on 05th of January 2015.

⁴ The States are Bauchi, Gombe, Jigawa, Kaduna, Kano, Kastina, Kebbi, Niger, Sokoto, Yobe and Borno.

⁵ Rasheed O., *Hisba and the Sharia Law Enforcement in Metropolitan Kano* (Ibadan: Department of History, University of Ibadan, 2011) at. 9.

⁶ Dozie Okebalama., "FG and past governors: Mocking the fight against corruption", *National Mirror*, November 30, 2012). Retrieved from < <http://nationalmirroronline.net/new/fg-and-past-governors-mocking-the-fight-against-corruption/>, Accessed on December 2015. On 24/3/2000 Bello Garki

the provisions of the Constitution of the Federal Republic of Nigeria which recognizes Nigeria Police Force as the only institution empowered to enforce law and order in the country,⁷ the Police Force, is a federal institution, while the introduction of the *Shari'ah* Penal Law could be traced to the efforts of a certain number of northern states, now known as *Shari'ah* states.

Nigeria is a federation of 36 states and a federal capital territory. One odd feature of the Nigerian federal system is that the 36 federating states have no state police to enforce the law. Besides, the Federal Constitution which establishes the Nigeria Police Force is silent on the applicability of the *Shari'ah* Penal Laws to criminal cases.⁸ Although the constitution created and recognises *Shari'ah* Court of Appeal of the Federal Capital Territory and *Shari'ah* Courts of Appeal for each state of the federation, the constitutional provisions on the jurisdiction of those courts conspicuously leave out criminal matters.⁹ The relevant provisions of constitution prescribe the jurisdiction of the courts to civil proceedings involving; amongst others, questions of Islamic personal law; which includes questions of Islamic personal law regarding a marriage concluded in accordance with that law; questions of that law regarding gift, will, or succession where the endower, donor, testator or deceased is a Muslim.¹⁰ The parties must be Muslims who have voluntarily submitted to the jurisdiction of the courts.¹¹

Jangedi's hand was amputated for stealing cattle. Although courts have imposed the penalty of stoning for adultery in a couple of cases, no single execution has been carried out.

⁷ Section 214 of the 1999 Constitution of federal Republic of Nigeria.

⁸ Asein, J. O. Introduction to the Nigerian legal system 2nd Ed. Lagos: Ababa Press Ltd 2005 P. 193-195

⁹ See sections 260-264 and Sections 275 – 279 of the Constitution of Federal Republic of Nigeria 1999.

¹⁰ See Sections 262 – 276 of the 1999 Constitution.

¹¹ Section 275 (i) which provides thus “There shall be for any state that requires it a *Shari'ah* Court of Appeal for that state” This provision underscores the fact not all states are compelled to adopt the *Shari'ah* legal System hence, the limited number of states practicing it, even in the North. For example Kwara State did not adopt the *Shari'ah* penal law yet it is a Northern state.

From the foregoing therefore, it is contentious whether the Nigerian Police Force, which is a federal institution, can enforce the *Shari'ah* Penal Law owing to the silence of the constitutional provisions on the place of *Shari'ah* Penal Law *vis- a- vis* the Constitution.¹² This constitutional lacuna best explains why states that have adopted the Sharia Penal system have established special police to perform the duties the federal police ordinarily should be performing. It is in view of this fact that this study, while identifying the several other factors, singles out the incapacity of the police as the most significant reason for the passive status of *Shari'ah* Penal Law in Nigeria.

The argument is made in line with the provisions of the Constitution of the Federal Republic of Nigeria 1999¹³ as read together with the Nigeria Police Act 1967.¹⁴ Moreover, the argument is also reinforced by the fact that the *Shari'ah* Penal Law is a valid component of Nigerian Legal System. A suggestion is therefore made for the establishment of a subordinate body to the Police Force which will be equipped with the necessary knowledge regarding the enforcement of the law. Such agency will have the same status with that of the other security outfits in the country, such as the Security and Civil Defense Corps, Federal Road Safety Commission and the Lagos State LASTMA that assist the Nigeria Police Force in the performance of its duties.¹⁵

1.2 STATEMENT OF PROBLEM

The reintroduction of Sharia Penal Law in the 12 states of northern Nigeria underscores the importance of the Islam in the politics and culture of the people of the

¹² Sections 2 & 3, the Constitution of the Federal Republic of Nigeria 1999.

¹³ Section 214, the Constitution of the Federal Republic of Nigeria 1999.

¹⁴ Nigeria Police Act 1967.

¹⁵ The National Drug Law Enforcement Agency (NDLEA) and Economic and Financial Crimes Commission (EFCC) are examples of security agencies that are carrying out enforcement of penal legislations which ordinarily ought to be the sole responsibility of Nigeria Police Force.

region. Zamfara State led the way in 1999 by making certain laws, which, amongst other things, introduced *Shari'ah* Penal Law,¹⁶ an action considered revolutionary, given the fact that hitherto existing Sharia courts exercised jurisdiction on only civil proceedings related to Islamic Law. The reintroduction of *Shari'ah* Penal Law immediately raised some problems, such as constitutionality of the *Shari'ah* Penal law *vis-à-vis* the provisions of 1999 constitution, the implications for the secular status of Nigeria, the penalties prescribed by *Shari'ah* for offences under it were considered barbaric and incompatible with modern civilisation and whether it is legal and effective to use the Nigeria Police-a federal apparatus- as agency of enforcing *Shari'ah* Penal Law in the 12 states. The last problem forms the fulcrum of this study. This study examines whether the enforcement of *Shari'ah* falls within the mandate of the police. If so, can the Nigeria Police, given its administrative structure and legal mandate, and also taken into accounts its various institutional and other challenges, effectively enforce Sharia Penal Law? Also, whether any organized body (such as *Hisbah*) can lawfully and practically play a complementary role in enforcing *Shari'ah*.

1.3 OBJECTIVES OF THE THESIS

1. To examine the relevant Nigerian law in a bid to justify that the *Shari'ah* Penal Law is a component of the Nigeria legal system.
2. To consider the administrative and legal structure peculiar to Nigeria Police Force.

¹⁶ For example, *Shari'ah* Court (Administration of Justice and certain consequential changes) law No 5 1999. *Shari'ah* Court of Appeal (Amendment) Law No 6, 2000. Area Courts (Repeal) Law No 13, 2000 *Shari'ah* Penal Code Law, 1999; *Shari'ah* Criminal Procedure Law No 18, 2000.

3. To analyze and discover the various legal and administrative challenges confronting the Nigeria Police in its enforcement of the *Shari'ah* Penal Law
4. To suggest for an improvement in the performance of the police role in enforcing *Shari'ah* Penal law.

1.4 HYPOTHESIS

1. Constitution allows the creation of *Shari'ah* Penal System.
2. Since *Shari'ah* Penal law is a component of Nigeria legal system it is validly enforceable by the police.
3. The current legal framework allows the police to enforce *Shari'ah* Penal Law.
4. Since the current legal framework allows the police to enforce *Shari'ah* Penal Law, a specific unit can be set up in the police force under the current legal framework to make the role of police more effective

The research therefore, will address the following questions;

1. What are the provisions in Nigeria Constitution for *Shari'ah* Penal System?
2. What are the provisions for the enforcement institution?
3. What are the provisions of law regarding police powers?
4. How can police exercise the powers?
5. Is it possible to have a separate institution that may be set up to enforce *Shari'ah* Penal law?

1.5 METHODOLOGY OF THE STUDY

The study is a qualitative research which involves doctrinal and non-doctrinal analysis. Under the doctrinal analysis method, this research considers the provisions of Nigerian laws generally. This includes the Constitution of the Federal Republic of Nigeria, Common Law of England, Statutes of General Application, local Acts and states' laws, subsidiary legislations and decided cases. Besides, copious reference will be made to law text books, journals, scholarly articles, encyclopedias, dictionaries, and online materials.

The non-doctrinal analysis involves; firstly, library research which involved sourcing and thorough study of the materials gathered; secondly, observations, relating to the subject of this study, gained as a Nigerian citizen and a law enforcement agent with over 15 years working experience within the Nigeria Police Force; and thirdly, interviews with eminent legal practitioners, judges, al-kalis, senior police officers, civil servants, complainants and prosecutors and other relevant stakeholders, in the course of police duty. The questions posed in the interviews and above mentioned personal observations were open ended as they occurred over a long period of time; with a purpose to satisfy curiosity and gain knowledge.

The data obtained were subjected to in-depth and critical analysis.

1.6 SCOPE AND LIMITATION OF THE STUDY

The research will focus on only three of the *Sharī'ah* states. These are Zamfara, Bauchi and Kano states respectively. The reasons for the adoption of these 3 states are three-fold; firstly, Zamfara State is unique for spearheading the revolutionary decision for introducing the *Sharī'ah* Penal Law; and was the first to legislate on the decision. Secondly, Kano State has the highest number of Muslims concentrated in a single

State in Nigeria; and thirdly, Bauchi State has been chosen because of its being the most liberal northern state in Nigeria with respect to Islamic tents. These choices make it easy to do a critical and balanced examination of the subject of study. This study will examine the challenges that confront the Nigeria Police as regards the enforcement of the newly reintroduced Islamic Penal law in some northern Nigeria states.

The challenges mainly emanated from the available laws. That is the constitution, the Police Act and the various state edicts. The lacuna in the laws shall be pinpointed, and suggestions on how to rectify the problems shall be made. The research will not discuss any other laws except for the purpose of analysis. There is a dearth of literature and decided cases on the implementation of the *Sharī'ah* Penal System in Nigeria. It is hoped that this gap will be filled with an abundance of materials on the received English Criminal Law. The fact that both the received English Penal System and *Sharī'ah* Penal System operate in the same environment makes deduction and comparison easier.

1.7 LITERATURE REVIEW

There are enough works of literature on the issue of the enforcement of the *Sharī'ah* Penal Law in Nigeria. The subject is one of the topics which are central to discussions among the legal practitioners and law enforcement agencies in Nigeria. However, the reviewed literature is divided into two segments. The segment (a) discusses the Nigeria Police Force in general, while the segment (b) discusses *Sharī'ah* in Nigeria.