

SECTION 10 OF THE 1999 CONSTITUTION OF NIGERIA: A TOOTHLESS BULLDOG?

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ABSTRACT

One significant development that characterised the return to democratic rule in Nigeria in the year, 1999, was the sudden introduction of the Sharia Penal System or Penal Code by some northern states in Nigeria beginning with Zamfara State. This development brought about a lot of issues both political and constitutional heating up the body polity of Nigeria. There have been arguments that Section 4(5)(k) justifies the introduction of Sharia Criminal Law since the power to create more courts and make laws in respect of matters listed on the concurrent legislative list is given to the various States Houses of Assembly by the said section, while others argue that by the clear provision of Section 10 of the Nigerian Constitution of 1999 (as amended) which prohibits adoption of a religion as state religion, the introduction of sharia penal law would be unconstitutional. This article concludes that the adoption or implementation of the Sharia Penal Code in the face of the clear provision of section 10 of the 1999 constitution gives an impression that the said section 10 is not potent enough as it looks only as a declaratory provision without any legal venom to forestall or deter the government of any state from adopting a religion as state religion. However, it is also pertinent to have a community reading of the whole provisions of the constitution taking into cognisance section 1(1) & (3). This section declares the supremacy of the constitution over any other law which obviously mean that any law which is inconsistent with any provision of the constitution must be void to the extent of its inconsistency.

Introduction

Sharia is the totality of Allah's commandments governing the *forum externum* of all actions of Muslims as interpreted by the seal of his prophet, Muhammad. It is the Law expected as of duty, to be applied by Muslims in their individual lives.¹ Sharia deals with many topics addressed by secular Law, including crime, politics, economics, as well as personal matters such as sexual intercourse, hygiene, diet, prayer, everyday etiquette and fasting. Though interpretations of Sharia vary between cultures, in its strictest and historically coherent definition, it is considered the infallible Law of God as opposed to the human interpretation of the Laws.²

The Qur'anic verses and the examples set by the Islamic Prophet Muhammed in the Sunnah are the two primary sources of Sharia Law³; where it has official status, sharia is interpreted by Islamic judges who are called qadis with varying responsibilities for the religious leaders called imams. For questions not directly addressed in the primary sources, the application of sharia is extended through consensus of the religious scholars (Ulama) thought to embody the consensus of the Muslim community referred to as the Ijma. Islamic jurisprudence will also sometimes incorporate analogies from the Qur'an and Sunnah through Qiyas, though many scholars also prefer reasoning ('aql') to analogy.

As far back as 11th century, sharia has been planting its roots in many parts of today's Nigeria like Iwo, Ikirun, Ede, Ilorin, Kano, Borno, Katsina and Etsako Division Auchi and Okpella of Edo State and in the period between 1804 and 1900, it was practiced in those parts either as the law of the state or applied by some communities within the regions.⁴ This was a result of the Othman Danfodio's jihad of 1804. Many states in Nigeria thus had Islam as their religion as early as then. By this, Islam became one of the major religions in Nigeria.

¹ A. I. Abikan, *Constitutional impediments to the Enthronement of Shari'ah in Nigeria* (The University of Ilorin Law Journal, 2006).

² J. Esposito, *Women in Muslim Family Law* (Syracuse University Press, 2001).

³ K. Hamann, 'Aceh's Sharia Law still Controversial in Indonesia' (December 29, 2009).

⁴ U. Y. Abdullah, *Sharia in Africa*, (Leebu-Ode, Shebiotimo Publication, 1998) pp. 83 – 84.

I. **The Demand for Sharia In Nigeria**

In the run up to Nigeria's independence in 1960, tremendous pressure built up for legal and judicial reform in the Northern Region which "was the only place outside the Arabian peninsula in which the Islamic Law, both Substantive and Procedural, was applied in Criminal litigation sometimes even in regard to capital offences". The considerable Christian and Animist minorities in the North needed to be assured that sharia law would not be imposed upon them in the Native and Customary Courts.⁵ On the other hand, Muslims demanded that they would not be subjected to statutory Law which would be in conflict with the injunctions of the Qur'an and Sunnah.⁶ The Islamic Criminal Law both substantive and procedural was abrogated alongside all other native and customary criminal Law and procedure as a way of solving the imminent religious crisis. The penal and criminal procedure codes were enacted in the stead of these abrogated statutes. However, Islamic personal Law being the Islamic Law of personal status and the family and other Islamic civil law like the Law of Contracts, torts etc were retained in the new regime. To this end, a new sharia court of Appeal was established for the Northern Region and the decisions of the new court were final with exclusive jurisdiction over matters decided in the Lower Courts under Islamic personal Law.

The 1960 settlement worked, as long as it lasted. However, with the transformation of Nigeria in the Federation of States in 1967 and the creation of more states in 1976, the Northern Region was divided first into six (6) and later into ten (10) smaller states. This led to the division of one High Court and one Sharia court of Appeal for the entire Region, first into the new states.⁷ This raised the question of how to harmonize the work of all these new courts. This was not a problem for the new High Courts because their statutes already allowed appeals from them to the Federal Supreme Court which could resolve any conflict that might arise between them. But for the new Sharia Courts of Appeal, they would all be adjudicating, with finality, on the same class of cases. Inevitably, they would decide similar case differently, thus creating conflicts of Law.

⁵ J. N. D. Anderson, *Law Reform in the Muslim World*, (The Anthlone Press, London, 1976) 27 at 28.

⁶ S. S. Richardson, *No Weariness: The Memoir of a Generalist in Public service in four continents* (Malt House Publishing, Wylde, Wiltshire, 2000) 209.

⁷ Although after the second state creation exercise only nine Sharia Court of Appeal resulted because Plateau and Benue state newly split into two (2) shared one between them.

It would have been possible, of course, to adopt a U. S. style solution of this problem; creating Islamic Personal Law as State Law, retaining the finality of the judgments of the State Sharia Courts of Appeal, and simply accepting any conflicts that might develop from state to state. Instead, the solution proposed was the creation of a new “final” or ‘upper’; or ‘federal’ sharia court of Appeal (all these names were suggested at one time or another) that would sit to hear appeals from the state sharia court of Appeal and thus (among other things) to resolve any conflict that might arise between them. This idea was embodied in the famous Constitution Drafting Committee (CDC) proposal for a Federal Sharia Court of Appeal that would, more or less, be an offspring of the Sharia Court of Appeal earlier established by virtue of the terms of the 1960 settlement. This became another bone of contention which led to a protest by Christian members of the constituent Assembly of 1976 with a grouse that this privileged Islamic Law, created a dual system of Law in the country and that it was a lee way for the Islamization of the Nigerian State. The Muslim members reacted that the application of Sharia was the fulcrum of their lives as Muslims and that denial of its application was an infraction of their rights and discriminatory and in fact, an attack on Islam.⁸

The debate became so heated that the Muslim delegates staged a walkout. In some Northern cities, protesters took to the streets in Zaria and Kaduna with such banners as: “No Sharia, No peace; No Sharia, No Constitution; No Sharia, No Muslims, No Nigeria etc.”⁹ The problem became serious that the then head of state, General Olusegun Obasanjo, intervened and warned the members of the Assembly that they were in danger of leading the country on the path of disintegration.

II. **The Place of Sharia under the 1979 Constitution**

In the contest of the making of the 1979 constitution, however, a compromise was reached as a measure to stem the tide of religious crises. The Federal Sharia Court of Appeal was rejected. Instead, a provision was made for state Sharia Courts of Appeal which decisions were not to be

⁸ J. Hunwick, ‘An African Case Study of Political Islam: Nigeria’ in C E Butherworth and I W Zartman, *Political Islam* (Vol. 524, the Annals of the American Academy of Political and Social Science, 1992), 149.

⁹ M. H. Kukah, *Religion, Politics and Power in Northern Nigeria*, (Spectrum Books, Ibadan, 1993) 127.

final; appeals would lie with the already existing Federal Court of Appeal (the constitution mandating that its composition includes at least three justices learned in Islamic Personal Law), and thereafter to the Supreme Court,¹⁰ it is imperative to note that this solution to the problem of appeals from the state Sharia Courts of Appeal was reproduced in the 1999 constitution.

III. Sharia and the Prohibition of State Religion

The controversy over sharia has remained unabated. Central to the sharia imbroglio are whether the introduction of sharia in some states is inconsistent with the constitutional prohibition of the adoption of any religion as a state religion¹¹ and the fact that the Nigerian Constitution, in unambiguous terms, guarantees freedom of religion.

Section 38 (1) of the Nigerian Constitution provides 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”.

There are divergent opinions over whether the Zamfara-Style introduction of Sharia is constitutional or not. It has been argued¹² that Nigerians should be honest in accepting the truth that state enforcement of Sharia, in all the plenitude of its injunctions, cannot in the multi-religious society of Nigeria, co-exist with a truly federal form of political association. Section 10 was first introduced as a condition of Nigeria’s association as one nation by the 1979 constitution. This was not found in any of Nigeria’s earlier constitutions, so that the incorporation in 1960 of the elements of Sharia into the Penal Code of the Northern Region did not at the time raise any question of Constitutionality. The continued application of existing Laws for instance, the Penal Code and Sharia Civil Law under Section 315 of the constitution

¹⁰ Sections 213, 217, 218, 226 and 252 of the 1979 Nigerian Constitution.

¹¹ Section 10, CFRN, 1999 provides: ‘the government of the Federation or of a state shall not adopt any religion as state religion’.

¹² B O Nwabueze, *The Sharia Issue: Constitutional Problems, Working Papers for a Dialogue, A Committee of Concerned Citizens. March, 2000, 15*

is expressly made subject to their not been inconsistent with any provision of the constitution such as section 10. It is not therefore correct, as section 315(3) makes it clear, to say that the constitution ‘adopts’ existing Laws, which implies the bestowal of constitutional validity on them beyond challenge in the court on the ground of unconstitutionality. Some elements of the sharia incorporated in the penal code may well be open to challenge for inconsistency with section 10 of the constitution if their connection with the Moslem religion is so clearly manifest as to indicate that the legislative power of the state has been used to aid, advance, foster, promote or sponsor that religion.

Suffice it to state that the prohibition of certain conducts as criminal offences by the penal code derives its legal force from the code, and not from the sharia, which serves only as a source. The adoption of sharia as a form of law (as distinct from its source) by which legal force is given directly to the prohibition of certain conducts as criminal offences is a different matter altogether. The difference is brought out in clear terms by the Hon. Mohammed Bello, the retired Chief Justice of Nigeria when he said:

Since the euphoria on the sharia issue started in Zamfara State, some enthusiasts have been advocating the return to the enforcement of sharia criminal law from its original source as was done by the Alkali and Emir’s courts before the enactment of the penal code in 1960. They have been calling for the replacement of the penal code by the Qur’an and authoritative books on Hadith.¹³

His Lordship further stated that without codification by law enacted by the National Assembly or a State House of Assembly, the application of sharia criminal law by virtue of authority derived directly from the Qur’an or the Sunnah will be inconsistent with Section 36 (12) of the 1999 Nigerian constitution which prohibits the conviction of a person of a criminal offence “unless that offence is defined and the penalty therefore is prescribed in a Law enacted by the National Assembly or a State House of Assembly.” There is no gain saying that sharia, also where punishment under it, for instance amputation of the hand, haddi lashing, involves torture, is inhuman or degrading or is otherwise derogatory to human dignity; or where change

¹³ n(10)

of religion, which is guaranteed by section 38(1) is prohibited and made punishable by death (ridda).

However, with due deference to the retired Honourable Chief Justice of Nigeria,¹⁴ non-codification of sharia criminal law is not the only problem with the adoption of sharia. The question goes beyond that and its fulcrum is whether the power of the Federal or State Government can, conformably with the prohibition in section 10 of the Constitution be employed to codify Sharia Criminal Law in all its plenitude as ordained by the Qur'an, the Sunnah and other Islamic holy books, and to enforce it against Muslim and non-Muslim offenders alike by arrest detention, prosecution, trial, conviction and punishment. It is submitted that if its application is restricted to only Muslims, then it will become clear that it is a law of the religion of Islam and then it will be exposed as a state sponsored religion. Therefore, whether in its original form as contained in the Qur'an and the Sunnah or in a codified form to be enacted by the National Assembly or a State House of Assembly, the application of Sharia Criminal Code will be unconstitutional in view of section 10 of the Constitution. The freedom constitutionally guaranteed to citizens including Moslems to manifest and propagate their religions or belief in worship, teaching, practice and observance either alone or in community with others in public or in private¹⁵ is sacrosanct.

Sharia is the legal prescription of the religion of Islam as laid down in Qur'an, the Sunnah and other sources. It is thus an integral part of the Moslem religion. However, it is important to bring to the front burner the fact that the state's legislative, executive and judicial powers cannot be used to enact or edify the criminal aspects of the sharia to arrest, detain and prosecute offenders, and to convict and punish such offenders. In Civil Law, the state through its judicial arm, the courts, merely interpose its machinery as an impartial, disinterested arbiter between parties in a dispute; it lacks the power to initiate the process of adjudication, and must wait until it is moved by one of the disputants. So the enforcement through the courts, of the civil aspects of sharia does not involve the support, promotion or sponsorship by the state of the Moslem religion in preference to other religions.

¹⁴ Mohammed Bello CJN, Retired.

¹⁵ Section 38, CFRN, 1999 (as amended).

However, regarding the criminal jurisprudence, the measures are different. The state invokes its coercive power to arrest and detain an alleged offender, to initiate a criminal charge or proceeding against him in court, and to see to the effective prosecution of the charge. In that light, the enforcement by the state of the criminal aspects of sharia involves the use of its machinery to aid, support and sponsor the Moslem religion in preference to other religions.

IV. Fundamental Rights under Sharia Penal System

Most written constitutions in the modern day world contain extensive, and most at times, intensive provisions safeguarding certain inalienable rights, called fundamental rights. While the rights are guaranteed by each country's constitution, having regard to the local conditions inherent in that country, there are common features running through those rights, which have come to stay as internationally accepted norms that each member of the comity of nations must accept as the minimum safeguard of those rights. Thus; while one country may safeguard a particular fundamental right in a way different and quite distinct from the others, no country is expected to cross the baseline or minimum standard of requirement for safeguarding such a right.¹⁶

The supreme court of Nigeria had thus defined fundamental right as Laws of the land and which in fact, is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by the constitution so that the rights would be immutable to the extent of the non-immutability of the constitution itself.¹⁷

Nasir, JCA also distinguished between ordinary rights and fundamental rights when he stated thus:

Distinct difference has emerged between fundamental rights and human Rights. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These are termed, human rights. When the United Nations made its

¹⁶ S. T. Hon, *Constitutional Law and Jurisprudence in Nigeria*, (Pearl Publishers, Port Harcourt, 2004) 79

¹⁷ Ransome-Kuti Vs. Attorney-General of the Federation (1985) 2 NWLR (pt 6) 211

*declaration it was in respect of Human Rights as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, and religion and so on. This has now formed part of international law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; this is by the constitution.*¹⁸

Therefore fundamental rights are those that are so fundamental to the very existence of a particular country that they stand above all the ordinary law or human rights of a country. They are also guaranteed by the fundamental law, being the constitution of the particular country by their fundamentalism. In Nigeria, these rights are guaranteed in chapter 4 of the 1999 constitution (as amended) running from sections 33 to 45.

One issue very cardinal about this is that no matter how fundamental these rights are, they are not above the country and its constitution or its people. It has been held that a fundamental right is certainly a right which stands above the ordinary laws of the land but that no fundamental right should stand above the country, state or the people.¹⁹

A. Right to Life under Sharia Penal Law

Chapter 4 which deals with fundamental rights begins with section 33 enshrining right to life. It provides that every person has right to life and that no person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.²⁰ Under sharia law it is a sacrilege punishable with death for a Muslim to denounce Islam. It may be argued that apostasy is not provided for in the various sharia penal regimes in Nigeria. However, there is an omnibus provision in the sharia penal code that incorporates all other sharia practices as part of the sharia criminal law. Be that as it may, it is submitted that a sharia court which is an inferior court has no competence to sentence anybody (including any person who may have abandoned Islam for

¹⁸ Uzoukwu vs. Ezeonu II (1991) NWLR (pt 2000) 708

¹⁹ Badejo Vs. Minister of Education (1996) 9-10 SCNJ 51 per Kutigi JSC.

²⁰ Ajunwa Vs. State (1988) 4 NWLR (pt 89) 380.

any other religion) to death. Where however, any body is convicted of apostasy or sentenced to death of the sharia capital offence of apostasy which is not codified then such sentence will be unconstitutional.²¹ The execution of such a convict will therefore be an infraction on the right to life of the victim.²²

B. Right to Dignity of Human Person

Section 34 (1) of the 1999 constitution provides that every individual is entitled to respect for the dignity of his person and thus

- (a) No person shall be subjected to torture or inhuman treatment,
- (b) No person shall be held in slavery or servitude; and
- (c) No person shall be required to perform forced or compulsory labour

Sections 101, 127, 131(a), 135, 136 and 137 of the Sharia Penal Code, Laws of Zamfara State prescribes between 50 to 100 lashes for offences that fall under the provisions which include adultery, sodomy, incest, lesbianism, bestiality, etc. Again, by Sections 127(b), 131(b), 135(b) and 133(b) which prescribe stoning to death and Section 153(d) under which a convict of Hirabah meaning armed robbery is to die by crucifixion are clear derogatory to the right to dignity of human person.

In the Indian case of *Sangthan Vs. State Rajasthan*²³ it was held that even one held on lawful detention is entitled to be treated with dignity befitting any other human being and that he is under lawful detention cannot take away that right. In Zimbabwe, that country's Supreme Court also held that sentence of corporal punishment imposed on juveniles pursuant to a criminal code was unconstitutional by virtue of section 15(1) of its constitution with a similar provision as that of Nigeria.²⁴ A 'Person' was infact defined as not only meaning the physical body, but also the human psyche and other mental attributes. Inhuman treatment was

²¹ See *Aoko Vs. Fagbemi* (1961) All NLR, 400.

²² Under sections 127(b), 131(b), 135(b) and 133(b), married convict of Adultery are to die by stoning while under 153(d) convict of the offence or Hirabah (armed robbery) is to die by cruxifixion.

²³ AIR (1989) Rajasthan 10

²⁴ *S. Vs. Juvenile* (1989) 61 (SC)

equally defined as any barbarous or cruel act or acting without feeling for the suffering of the other.²⁵ The above provisions of the Sharia criminal order which prescribe corporal punishments and dehumanizing execution of persons convicted under the code of certain offences are, to say the least, offensive to the unambiguous provision of Section 34(1) of the 1999 Constitution.

C. **Right to Freedom of Thought, Conscience and Religion**

Section 38(1) entitles every person to freedom of thought, conscience and religion, including the 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. Under subsection (2), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian under subsection (3), no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place and education maintained wholly by that community or denomination.

It is submitted that if apostasy or a change of religion of Islam²⁶ is an offence punishable with death (or punishable at all) then it is an affront to the constitution. In *Medical and Dental practitioners' Disciplinary Tribunal Vs. Emewulu*²⁷, the right to freedom of thought, conscience or religion was held to imply a right not to be prevented, without Lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The court went further to say that the limit of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.

²⁵ n(18) per Nasir, JCA

²⁶ Riddah

²⁷ (2001) 3 SCNJ 106

Though Muslims have argued in support of sharia implementation that not allowing them full implementation of sharia is an infraction on their right to freedom of religion, conscience and thought, it will be appropriate to state that whereas the constitution gives this right and freedom it must be exercised within the confines of the constitution and must not be exercised in breach of the citizens right. The plenitude of sharia implementation which forbids the change from Islam to another religion is an inhibition of the same right that Moslems quest for. In essence, one is protected to worship whatever in as much as such will not lead to the membership of any secret cult under the guise of religion. However, changing from one religious inclination to another is also allowed by the same provision of the Constitution and those who wish to so do should not be prevented from doing so by the religious laws or practice of any religion also.

D. Right to freedom from discrimination

Section 42(1) provides:

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -
 - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, religion or political opinions.

Section 42(2) provides:

- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

A number of the new enactments of the sharia states specifically affect women. Most of these have to do with keeping males at bay from the females or where they have to mix together, to try to make females less sexually attractive to the males. Making the wearing of

hijab²⁸ compulsory for all female Muslims of ten or more years old appearing in public is purely discriminatory as Muslim males have no corresponding strictures. Even where there is no law that makes it compulsory it has been enforced in such manner by the Hisbah particularly in cities as Kano where attempts have been made through regulations governing state institutions, including schools, and outside such institutions through pressure exerted by the said Hisbah groups. The attempt to separate males from females in taxis and buses and to forbid females from boarding commercial motorcycles is also discriminatory. Some States try to regulate or stop social mixing of Muslim males and females at events like weddings and naming ceremonies. Though it seems these female Muslims do not seem to be disturbed by these strictures unless it impinged on their livelihood or mobility or on their traditional modes of socialising and enjoyment²⁹, it is submitted that such practices are discriminatory in view of the provision under review. It is also observed that Muslim women activists are yet slow to object these discriminatory practices. The Child Rights Act which encapsulates right to education is one of such issues that find deficit under Sharia as Muslim girls who ought to go to school are often married off much younger even as early as nine or ten.

This, apart from keeping them out of school also contributes to serious public health problem. Vesico-vaginal Fistula (VVF) which is a result of pregnancy and child birth particularly when the pregnant female is underage is a serious challenge. Since the domestication of the U.N. Convention on the Rights of the Child (CRC) in 2003 by the National Assembly resulting in the Child Rights Act, 2003, many prominent Muslim women organisation have however, mounted campaigns for the ratification of the same by Northern States yet this has not been ratified by most northern states. A worse antagonism even faces the U.N. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Nigeria ratified this convention in 1985 yet the bill has not been domesticated by an enactment of either the National Assembly or the states Houses of Assembly.

V. **Non-Muslims**

²⁸ A covering worn over other clothing, drawn tightly around the face and draping loosely down to the knees.

²⁹ J. M., *Sharia implementation and female Muslims in Nigeria's Sharia State* (2007).

The introduction to the Sharia Penal Code of Zamfara State Law No. 10 of 2000 written by the Honourable Attorney General of the State then, Ahmed Bello Mahmud and the note written under punishment of offences committed in the state clearly declare that the sharia penal code does not apply to non-Muslims, unless they consent in writing. However, practically speaking it is very obvious that the effect of Sharia implementation is indeed very daunting on non-Muslims living in the sharia states. This is very obvious in terms of economic rights where dealing on certain commodities or beverages are prohibited. Section 149 of the code provides that whoever prepares alcohol by either manufacturing, pressing, extracting or tapping whether for himself or for another; or transports, carries or loads alcohol whether for himself or for another; or trades in alcohol by buying or selling or supplying premises by either storing or leasing out premises for the storing or preserving or consumption or otherwise, dealing or handing in any way alcoholic drinks shall be punished with canning which may extend to forty lashes or with imprisonment for a term which may extend to six months or with both.

Lottery and gaming are also criminalized under the new sharia dispensation.³⁰ These are economic activities that are not criminalized in other states where sharia criminal law is not introduced. So there is an element of conflict with Section 42 of the constitution which provides for right against discrimination. Again, the various provisions which prohibit the above economic activities do not exempt non-Muslims from the ban on the various product or activities. In this light, there is a violation of the rights of non-muslims in these sharia states.

The prohibition is clearly expansive and all-inclusive meaning that non-Muslims who would be caught in the cob-web will not also be spared. The question then is, since the preamble to the law is that non-Muslims are not affected, can non-Muslims violate these provisions by dealing on the prohibited products or can the non-Muslims engage in lottery or gaming in these states and without prejudices and unnecessary molestation by the Hisbah or any enthusiastic group? The answer to this poser is obvious as non-Muslims who tried earlier to deal on these prohibited activities were visited with grave consequences and then their economic lives were utterly put in jeopardy.

³⁰ Sections 394 and 395

However, it is necessary to state that the ban and prohibition of these products by Sharia Law is a mere sham since these sharia states still share from the resources got from Valued Added Tax (VAT) which are the resources from economic activities in the class of those prohibited by the said law.

Conclusion

Though the outright repeal of the Sharia Penal Code might cause political crisis, it is obvious that the enthusiasm for sharia is gradually declining as it was practically impossible to execute the first set of people that were sentenced to death or amputation. The cases of Jangabe and Safiya received both national and international condemnation while the court of appeal upheld their appeals and they were freed.

This gave a clear indication that though the quest for sharia was welcome by Muslim adherents its implementation is not without some challenges. Another angle to it is the fact that the Law enforcement agents prefer to charge accused persons before a magistrate and High Courts even in offences codified in the sharia penal code and consequently or technically putting the sharia in abeyance.

Again, most of the states where sharia criminal law was introduced have not recorded any conviction not because people have not committed infractions in the code but the problem is that the law itself seems to be practically not implementable, though it has been said that there are backlogs of unexecuted sentences, the convicts still languishing in prison waiting for something to happen and the sharia states are still discussing on what to do in these cases.³¹ This also boils down to the problem of implementation.

Be that as it may, it is very patent that the introduction of the new sharia criminal code is a gross affront to Section 10 of the 1999 Nigerian Constitution (as amended). The implementation of Sharia Criminal Law in the face of the prohibitive section of the constitution therefore shows that the provision is a mere toothless bulldog. The provision seems to be a mere declaratory provision which has no potency to placate the violation thereof.

³¹ J. M. Otto, "Sharia incorporated", A Comparative Overview of the Legal System of twelve Muslim countries in past and present, (Leiden University Press, 2010).

However, looking at the living provision of section 1(1) and (3) of the same constitution which declares the supremacy of the constitution, it is hoped that if the necessary Federal Government body or personality like the Attorney General of the Federation had gone to court to challenge the vicissitude of the introduction of sharia penal code in view of sections 1(1) and (3) and 10 of the constitution, seeking the court to declare it unconstitutional, the issue and its attendant crisis and agitations would have been put to permanent rest by now.

