

British Colonial Encounter with Sokoto Caliphate with Particular Reference to the Shari'ah Legal System (1903 – 1960)

UTHMAN A. ABDULQADIR

Department of Sociology, Faculty of Social Sciences, Usmanu Danfodiyo University, Sokoto

Abstract

Sokoto Caliphate like other empires in the Africa had an encounter with the British colonialist in the 18th century. The objective of this paper is to analyse the encounter and its impact on the Shari'ah legal system in the caliphate. Theoretically, the paper was built on the functionalist theoretical exposition. Content analysis was used as a method of data. Findings showed that the encounter produced a long-lasting result in all spheres of the caliphate and its inhabitants including the legal system. Before the encounter or arrival of the colonialist, the Sokoto Caliphate under Uthmanu Ibn Fodiyo had an elaborate and structured Shari'ah legal system in the caliphate. The British colonialists' encounter with former colonists left behind an elaborate system of administrative roots, including a working understanding of Islamic legal precepts in India, Pakistan and Bangladesh. However, before the arrival of the colonialist, African has method of settling disputes, therefore, there need to exhibit our uniqueness and value benefits and to prove to the rest of the world that the African method of criminal justice is not outdated or primitive in outlook and application, as some people in their toga of arrogance want the rest of the world to believe. It is pertinent for Africans to show the world that the African method of criminal justice is all about unity, transparency, love for one another, balance, and peaceful co-existence, respect for tradition and values, and fairness to all the stakeholders when it comes to dispute settlement within an African community or between and among African communities. The paper wrapped up that, the British Colonialist encounter with the Sokoto Caliphate left a negative legacy of a legal system that is alien to the culture of the people of the caliphate. The court system of the British colonialist was accompanied by some complex technicalities, bureaucratic procedures and methods of adjudication and inquiry which differed from the precolonial Islamic Shari'ah legal system practised during the era of Uthmanu Ibn Fodiyo. The return of democracy to Nigeria in 1999 led to the revival of the Shari'ah legal system in the Muslim-dominated Northern states including Sokoto State

Keywords: British Colonialism, Sokoto Caliphate, Encounter, Shari'ah Legal System, Revival of Shari'ah

Introduction

Virtually all known human societies have some form of legal system used as a mechanism to check deviant behaviours. In the modern world, legislatures, courts and administrative bodies promulgate and enact new rules, amend and repeal old ones when the need arises. Most of these laws have an effect on a given segment of the society by altering power relationships, redistributing rights, obligations and modifying social relationships. Laws bring changes in behaviour and influence lifestyles, values, institutional membership, patterns and practices. Through the continuous process of regulation, deregulation and selective enforcement, the legal system is an omnipresent instrument of social justice (Vago, 2006).

Every society has its own existing laws that govern the conduct of lives and activities of its people. It is against the background that law is referred as the vehicle for maintaining social order, social justice, good governance, harmony and tranquillity, which lead to stability equilibrium in a society. The benefits that accrue from law and order in any given society is security which in its extended sense, means peace, stability, social justice and good governance. The absence of law and order creates an atmosphere of confusion, chaos, anarchy and social strife. However, this functionality of law has been often challenged for its inability to account for its failure to explain how laws are often used by those saddled with the mantle of political leadership to perpetuate the inequality, subordination and exploitation of the weak, the poor, women and the vulnerable in the society (Deflem, 2008).

Sokoto Caliphate like other empires in the Africa had an encounter with the British colonialist in the 18th century, this encounter produced a long-lasting result in all spheres of the caliphate and its inhabitants including the legal system. Before the encounter or arrival of the colonialist, the Sokoto Caliphate under Uthman Ibn Fodiyo had an elaborate and structured Shari'ah legal system in the caliphate. Anderson (1996) narrated a similar experience of British encounter with Islamic law in India which was a former British colony. He succinctly put it that: As the tentacles of colonial rule stretched into the Indian subcontinent in the eighteenth century, the British had a minimal knowledge of Islamic legal arrangements. Yet in 1947, when the trunk of colonial power was formally chopped off, it left behind an elaborate system of administrative roots, including a working understanding of Islamic legal precepts. Since the same administrative roots have given succour to the post-colonial states of India, Pakistan, and Bangladesh, it is important to inquire into their provenance. The colonial courts charged with administering what had come to be called 'Anglo-Muhammadan law' were able to rely upon

a legal scholarship that included translations of Arabic and Persian texts, a handful of commentaries, as well as the precedent of hundreds of cases.

This encounter with the colonialism and its effects on Africa culture has been far-reaching in all ramifications. This position was marshalled by Akeredolu (204) the dynamics and value benefits of the African criminal justice administration ought to be adequately projected, touted, and courageously displayed to the world so as not to be consigned to the dustbin of history or hung on the back door of civilization by those controlling the world, who continue to see Africa as inferior in all matters that affect life.

It is on this ideological premise that; this paper takes as a point of departure for rigorous sociological analysis of the encounter between the British colonialist and the Sokoto Caliphate with emphasis on the Shari'ah legal system. Because several studies revealed that Africa has the efficient legal system before the arrival of the Europeans to the continent, notably Shari'ah legal system in the Sokoto Caliphate. Substantiating further, Akeredolu (2014) submitted that, before the arrival of the colonialist, African has method of settling disputes, therefore, there need to exhibit our uniqueness and value benefits and to prove to the rest of the world that the African method of criminal justice is not outdated or primitive in outlook and application, as some people in their toga of arrogance want the rest of the world to believe. It is pertinent for Africans to show the world that the African method of criminal justice is all about unity, transparency, love for one another, balance, and peaceful co-existence, respect for tradition and values, and fairness to all the stakeholders when it comes to dispute settlement within an African community or between and among African communities. But it is such a pity that the Europeans came and shoved most of the African traditions and values aside while superimposing their strange culture.

Furthermore, in a country that share some characteristics with Nigeria (former British colonies and have significant Muslim population), India, the British encounter with the Islamic legal system produced a serious contradiction in the administration and dispensation of justice. Anderson (1996) found out that, throughout the colonial period, Anglo-Muhammadan law was taken seriously as a politically sensitive and technically complex subject for legal scholarship. But there was an irony in this, for what the Company courts applied as Islamic law was often more alien than familiar to putatively 'Muslim' groups. Anglo-Muhammadan scholarship often distorted its subject matter, frequently reflecting British preoccupations more accurately than indigenous norms.

Additionally, the British confrontation with myriad forms of legal authority and variegated local practices highlighted one of the foremost problems of colonial control: how to obtain simple, reliable, and reasonably accurate understandings of indigenous social life without sacrificing great labour and capital. Law and legal institutions provided a solution. Equipped with indigenous advisers, colonial courts served as mechanisms of inquiry, while the classical religious-legal texts, whatever their genuine relevance, were taken as the key to understanding colonised cultures and societies. Most British intellectuals of the early colonial period stressed the importance of law in regulating social life. 'The rule of law' was a common piece of ideological baggage that linked law to public sentiments as well as political order. Law was more than an arm of sovereignty: it was employed as a proto-sociology that could guide policy. Accordingly, the first century of colonial rule witnessed the birth of an Anglo-Muhammadan jurisprudence comprising legal assumptions as well as law officers, translations, textbooks, codifications, and new legal technologies (Anderson, 1996).

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The aim of this section is to review the related literature and provides a theoretical framework upon which the paper is based. The sociological analysis of the encounter between the Sokoto Caliphate and the British Colonialist vis –a-vis the outcomes of the encounter on Shari'ah legal system and the people of Sokoto state and Nigeria in general, were also examined. The section reviews the literature on some of the sociological theories with particular emphasis on the functionalist theories of law, as expensed by Emile Durkheim, Robert K. Merton and Roscoe Pound. The research chooses functionalism as the theoretical framework to guide the analysis of the British Colonialist with the Sokoto Caliphate with particular reference to Shari'ah Legal System as a framework that dwelled on interrelated parts, integration and the maintenance of law and order aimed at maintaining the social system as a whole.

Shari'ah in Arabic

Literally, the concept Shari'ah (Islamic Law) denotes the way of life or a watering place or the path to be followed i.e. a way to a watering place. It is the path not only leading to Allah but the path shown by Allah through his Messenger Prophet Muhammad (SAW). Technically, Shari'ah means Islamic Law/Legal System. Law bears references to the issue of what should guide the affairs of man in his individual and collective activities. Hence, it covers a wide range of issues like family economic cum socio-cultural system. It also entails a system of power, leadership and authority and determines human conducts in various walks of life. It lays down rules and conducts for the administrative machine and the entire criminal justice system.

Origin, Development of Shari'ah

On the application of the Shari'ah, Lugard Quoted in Doi (1984:210) ruled that:

...you emirs can go on administering justice i.e. *Shari'ah* as before but without any suspicion and corruption. I also add that you should stop cutting hands of thieves; you must leave everyone with his feet and hands (the punishment of *Shari'ah* for robbery, homicide and continuous habit of theft.

To ensure full control on all the aspects of the *Shari'ah* and its application, the Colonialists equipped themselves with its knowledge and modified it to make sure that the *Shari'ah* did not contradict or was not in conflict with the British Administration. Ruxton, a colonial officer in Northern Nigeria quoted in Malik 19:132 said:

the advantage to be gained by knowing something of the law of the people we govern is self-evident, especially whereas in the case of Muhammadan countries it is the law. Again, whereas in the northern provinces of Nigeria it has been the policy of the government for instance. To rule indirectly through the native administration, knowledge of Muhammadan law is more than ever necessary, given as it does a clue to many acts and supplying the springs for many martyrs which otherwise we should fail to understand (Malik, 1999:132).

Seeing the importance people attached to Shari'ah and for the smooth running of their system, the colonialist x-rayed Shari'ah and came up with committees and commissions to understand the Shari'ah legal system and advise the government appropriately. Richardson, a colonial Commissioner for native courts in the Northern region opines;

the most important of the panel's recommendation was that it was necessary for a self-governing northern region to establish a system of criminal law which would gain international acceptance which would apply uniformly to all person living within the region, which would not discriminate against any section of the community and which would be generally acceptable throughout the region. Since the majority of the people living within the region advisable that the new system should not be a conflict with the injunctions of the Qur'an and Sunnah.

Ruxton's statement or observation showed that Shari'ah legal system is incapable of appealing to international acceptance based on its discriminatory application on the basis of one's creed or religion. For them, it is unacceptable to the region which needs special amendments before independence warranted. Taking caveat, the law not to contradict the two main sources of Shari'ah, Qur'an and Sunnah was only "Considered advisable". This was the place and fate of the Shari'ah in the process of legal amendments to meet up to the level of 'international acceptance'.

To positively respond to the above fears, the Northern Nigerian in 1958 came up with a Committee composed of International Jurists to make an appropriate suggestion on a penal code. The committee was headed by the then Chief Justice of Sudan, Justice Abu Ranat. Other members included a retired Justice of Pakistan's Supreme Court, Prof Anderson of the School of Oriental and African Studies, University of London; Honourable Kashim Ibrahim, Alhaji Musa Bida and Mr Peter Achimugu as a member. The Draft Bill based on Pakistan, Indonesia, Malaysia and Indian laws was submitted in 1959 for evaluation to the Sheikh Haliru Binji and Waziri of Sokoto Dr Junaid on 1st October 1960.

The committees' work began and by 1959, a draft bill based on the penal codes of India, Pakistan, Malaysia, Indonesia and Sudan was used and vetted by the then well-renowned and great Jurist of the region headed by the Wazirin Sokoto, Malam Junaid Bukhari. The bill was passed into law by the Northern House of Assembly on 14th October 1960 and this provided the application of Islamic Penal law. Thus, the new penal code law for the Northern region took effect. The penal code continued to apply criminal law in Northern states and in Sokoto state in particular.

British Colonial Encounter with Sokoto Caliphate

With the collapse of the Sokoto Caliphate in March 1903, the British established English Common Law to replace the *Shari'ah* legal system. According to Balogun (2000), by the year 1900, the *Shari'ah* preoccupied the legal system prevailing in both the civil and criminal matters administered by the Emir's Courts and *Alkali* Courts. The *Dogarai* (royal bodyguards) performed the functions of the police in enforcing and implementing the *Shari'ah* Penal Code Law. Bello (2001) noted that the colonialist did not interfere with civil matters at all. Nevertheless, in relation to criminal law, they substituted the following:

1. death by hanging for the offences of homicide and adultery instead of beheading and stoning to death under the *Shari'ah*
2. imprisonment as punishment for theft instead of amputation of the hand under the *Shari'ah* and

3. payment of *Diyyah* (blood money) in lieu of capital punishment was abolished

In the non-Muslim parts of northern Nigeria, the British Colonialists established customary courts which applied the customary law of their area of jurisdictions. In the same year, the Native proclamation allowed the application of the *Shari'ah* in civil and criminal cases in northern Nigeria. With the 1914 amalgamation of northern and southern protectorates, the Native Ordinance proclamation of 1916 allowed Northern Nigeria to practice the *Shari'ah*. The Criminal Code was introduced at the native Courts in northern Nigeria still practising the *Shari'ah* in both civil and criminal matters. Section four (4) of the 1933 Criminal code, which applies to whole Nigeria says;

no person shall be liable to be tried or punished in any Court other than a native tribunal for an offence except under the express provision of the Code (Kariby-Whyte 1933:130).

The Criminal code as amended in 1933 and removed the exemption granted to the Native Court so that appeals from the *Shari'ah* were referred to British Courts except on law of personal status. A classical case was the case of Tsofo Garba VS Gwandu Native Authority (1947) in which the West African Court of Appeal withdrew the judgment of the Gwandu Native Court. The Court sentenced Gubba to death based on the *Shari'ah* on murder charges. The West African Court of Appeal based its judgment on the ground of provocation. The judgment was not warmly received by the Muslim north, which saw it as an aberrant interference in the application of the *Shari'ah*. This singular act was seen as a breach of the original understanding between the north and the British not to interfere with Islamic religion.

In this regard, appeals from the Muslim Court of Appeal were unattended to by the Supreme Court, the West African Court of Appeal. This scenario and the grievance of Minority groups led to the appointment of a panel in 1958 to the colonial office in London to advise the Northern Nigerian government on how to harmonize *Shari'ah* Law and English Law after independence, the panel was led by its chair Professor J.N.D. Anderson, of the University of London, Sayyid Abu Ranat Chief Justice of the Sudan, and the Chair of the Pakistan Law Commission, Justice Muhammad Shariff. Other prominent people like Shettima Kashim, Mr Peter Achimugu, Musa Bidda, Haliru Binji. The panel recommended

1. The enactment of a criminal law which would apply uniformly to all persons living in northern Nigeria and which would not discriminate against any section of the community; and
2. That since the majority of the people in northern Nigeria are Muslims, the criminal law should not be in conflict with the injunctions of the Glorious *Qur'an* and *Sunnah* (Bunza, 1995).

The Draft Bill of the Code 1959 was based on the Penal Codes of India, Pakistan, Malaysia, Indonesia and the Sudan (whose populations are a Muslim majority, except India) which were scrutinised and vetted by the eminent *Shari'ah* jurists led by the Wazirin Sokoto, Malam Junaidu Bukhari. The Northern House of Assembly passed the draft bill into Law with effect from 1st October 1960.

To relieve the tension between Christians and Muslims in the North, some aspects of the *Shari'ah* were incorporated into the Penal Code. Karibi-Whyte attested to this when he laments that:

in order to appease Muslim sentiments, some Islamic Criminal Law concepts have been introduced into the new Penal Code. The Penal Code is a product of the conflict between the operations of Islamic Criminal Law and of the Criminal Code (Kariby-Whyte: 147).

However, the British super-imposed English law and progressively confined the *Shari'ah* to personal Muslim matters. In a sense, therefore, the British destroyed the *Shari'ah* legal system in Sokoto and all the other Muslim emirates of Northern Nigeria. Sokoto and all over Northern Nigeria were confronted with a number of problems due to colonialism. Such problems included their relationship with the colonial authorities and the question of their role and position under the new political dispensation created by colonialism. Muslims in Sokoto from the early colonial era also had to reckon with a number of realities such as the loss of their right to use arms to coerce or intimidate the enemies of Islam. This means, in effect, that colonial rule abolished the Islamic concept of *Jihad* as far as the obligation to use force, to spread, revive, or defend the faith was concerned. This paved the way for the incorporation of Northern Nigeria into the World capitalist economic system which Bako (1990; 29 – 30) opined that:

Islamic values and institutions were paralysed in Northern Nigeria because of colonialism in the pre – colonial period Islamic religion incorporated all aspects of life, political, social, economic and personal. Colonialism differentiated political, economic and social issues and relegated religion to personal matters only.

The *Shari'ah* is stigmatised as 'incivility,' terrorism and fundamentalism. As a result, *Shari'ah* law was abolished and replaced by western type legal institutions established for the administration of justice.

Colonial rule in this regard neutralised the *Shari'ah* legal system. The laws of the native courts, particularly the canonical punishments like the amputation of limbs for theft, and stoning adulterers to death, ceased to be applicable. There was also in Northern Nigeria no effort to encourage Islamic education throughout the colonial era (Bako, 2005). In reality; the colonial state also discouraged *Quranic* and Arabic education. The practice of

conducting the business of Native Administration in Arabic letters, for example (*Ajami*), was stopped. The British believed that if they allowed Arabic to develop they were indirectly encouraging the spread of Islam. (Bako: 2005). Colonialism in this regard revolutionised and did not preserve traditions as well as all forms of social values. Throughout the colonial era, the British policy towards Islam had sharp twists and turns. It was, as argued by Clark (1982) “a policy dictated by circumstances and design to secure the maximum cooperation from the task of administering large territories”.

It can be noted that because of the colonial rule in Northern Nigeria, policies intended to combat the influence of Islamic *Shari'ah* were introduced. The British introduced new policies in conformity with the general interest of capitalist development. The penetration of western values (Christianity, Capitalism, and Western Education) became unavoidable and the notion of the secular state emerged (Clark: 1982, Bunza 1995 and Bako 2005). To achieve the above colonial objective on the implementation of the *Shari'ah* Legal System, Lugard ruled that:

Your Emirs can go on administering justice i.e. *Shari'ah* as before but without any suspicion and corruption. I also add that you should stop cutting hands of thieves; you must leave everyone with his feet and hands (the punishment of *Shari'ah* for robbery, homicide and continuous habit of theft (Doi, 1984:210).

To ensure full control on all the aspects of the *Shari'ah* legal system but mostly its criminal application, the Colonialists equipped themselves with its knowledge and modified it to make sure that the *Shari'ah* did not contradict or was not in conflict with the British administration. To this effect Ruxton, a colonial officer in Northern Nigeria, said:

The advantage to being gained by knowing something of the law of the people we govern is self-evident, especially whereas in the case of Muhammadan countries it is the law. Again, whereas in the northern provinces of Nigeria it has been the policy of the government for instance. To rule indirectly through the native administration, knowledge of Muhammadan law is more than ever necessary, given as it does a clue to many acts and supplying the springs for many martyrs which otherwise we should fail to understand (Malik 1999:132).

In places where Muslims are the minority, *Shari'ah* Courts were not established to address the yearnings and aspirations of the Muslims. Added to these were civil cases, such as marriage and inheritance, even where Muslim adherents were involved, were decided by the customary courts. For instance, Southeastern Nigeria, Muslim Yoruba were not allowed to have civil cases, such as marriage and inheritance determined by the *Shari'ah* court. No single court was in Southwestern Nigeria in spite of a large Muslim population in the region. The situation remains so till date.

The Colonialists tactfully reduced the jurisdiction of the *Shari'ah* Legal System and removed all criminal offences in totality. The British Colonial Government asserted that no one would be tried for a criminal offence except for an offence which was codified under a written law. The *Shari'ah* Legal System was categorised as non-written and uncodified law by British colonialists. Thus, the English Legal System had full legal rights to try all cases in Nigeria, Muslim communities inclusive. This practice continued to be reflected in the Constitutional reforms and reviews even after Nigeria's independence.

The colonial process involved a wider cultural and structural diffusion of values and norms, of beliefs and social institutions which would make the organization of the colonial societies in its main outline as nearly as possible resemble the organization of Western societies whose ordering principle lies in the relative autonomy of the major functional spheres of society, especially the economic.

From these, the family or household in the Caliphate no longer serves as of productive activities.

Legal changes during the period under review

With the coming of colonialism, the legal process of Sokoto Caliphate was also altered, as Lugard says: “Again you have no power in the establishment of Native Courts in the cities and the procedure in them”. From this, it became clear that the colonialists assumed the role of the sole responsibility of all legal matters in the Caliphate. They introduced a legal system in which the appointment letter of Sultan Attahiru The *Shari'ah* Courts was abolished, and the British gave warrants to the Sokoto Province for only a few towns like Sokoto, Gwandu, Jega and Argungu. This system continued up till 1905, and these became the only courts in the province recognised by the colonialists. The term of their warrant is that an Alkali could not hold any court proceedings unless one of his assistants was present. Not to advise, as it has been the case, but to judge. This, therefore, undermined Islamic Law in the Sokoto Caliphate, which did not recognise the concept of this formation of a legal tribunal, which the British introduced. This had a great impact and was a lot of embarrassments to the Judges.

In addition, these courts were to try all cases barring cases connected to government workers without the permission of the Resident, and the sentence of death passed by them cannot be executed until approved by the Resident. Moreover, the Sultan had no right to determine their jurisdiction or review various cases before the

Caliph state of Sokoto as the religious duty of a Caliph. The Resident had the role of being in –charge of the province. Therefore, this system automatically deviated from the Islamic legal system, as adhered to in the Sokoto Caliphate.

The Courts were forbidden to use mutilation as punishment, because, according to the British, it was inhuman and cruel. Yet, mutilation was a difficult punishment ordained by Allah (SWT) which every *Alkali* was bound to uphold. However, the abolition of mutilation was a threat to the Sokoto Caliph administration and Muslims. Additionally, the British vested power on the Resident and his Assistant by the Protectorate Courts Proclamation of 1900 to determine all cases of whatever description within its area of jurisdiction, and their duty of being present at the trial, or alter any sentence passed by the native Courts. They also made all the Courts administer English Common Law, as it was imposed in January 1900. This meant that Islamic Law was no longer the only one to be administered in the Sokoto Caliphate, as the case was before the colonial administrator. At the tail end of 1905, a few more Courts were established and issued with warrants. They were Bukkuyum, Gummi, Maradun, Isah, Kaura-Namoda, Bakura, Dogon-Daji and Tambuwal in the Sokoto Emirate, which contradicted the provision of Islamic Courts existing prior to Colonial administration.

Revival of Shari’ah Legal System in Sokoto State in 2000

In 1999, with the revival of democracy in Nigeria, some people from Northern states initiated an idea for the revival of the legal system which was destroyed by the British Colonialist. Democracy appears to have stimulated a moral and cultural demand for full-fledged Islamic legal system in the predominantly Muslim states of Northern Nigeria. This demand reached its peak in 2000, where some State Governors decided the declared and implemented the Shari’ah legal system which started with Zamfara State and others like Sokoto State followed the footstep of Zamfara State.

It is within this paradigm that led to the expansion of the Shari’ah legal system in Northern Nigeria which provided an opportunity to critically examined the role of law, especially religious laws in a democratic and plural society. The return of the democratic system of governance in Nigeria in 1999 provided an avenue and political platform for people to demand a system which they believed has best suited their way of life. As a result of popular demand to implement the Shari’ah Legal System, the then civilian government of Sokoto state under the leadership of his Excellency, Alhaji Attahiru Dalhatu Bafarawa, enacted a law in March 2000 that allowed for the expansion of the Shari’ah Legal System in both civil and criminal matters. The linkage between the Shari’ah Legal System expansion to include criminal justice and popular agitation by the people of Sokoto State was one of the key highlights in the inauguration speech of the Governor.

In his maiden speech, the then Executive Governor of Sokoto State, Alhaji Attahiru Dalhatu Bafarawa, noted that:

... in response to the long-standing agitations of the people of Sokoto state, this administration has deemed it expedient to implement *Shari’ah* Law. The people of Sokoto state are heirs to Islamic tradition as exemplified in the Caliphate which was founded by Sheikh Uthman Bin Fodiyo and his lieutenants and as such, no democratic government could afford to ignore the aspirations of the majority of its citizenry (The Legacy 27th December 2000).

Apart from the agitation by the people, other factors put into consideration, according to the governor, were the history and tradition of the Sokoto Caliphate and the feelings of the people that, the existing penal code was grossly inadequate and did not represent the Islamic values and belief system of the Sokoto people. Other shortcomings of the penal code included its incompatibility with the Islamic principles of the administration of justice. Accordingly, the Governor said:

the people of Sokoto state have consistently expressed the feelings of alienation of foreign code of law which they also ardently believe is anathema to Islam and the traditions of their worthy ancestors. Hence good governance could only be possible when people are given the opportunity to determine the system of law they cherish in all paraphernalia of culture (Bafarawa, 2000).

It has become conventional for a people to struggle for the restoration of a lost practice, especially where the lost element is believed to have played a role in maintaining their identity or mode of appearance to the world. This singular instance has been very contributory that shaped the thoughts and actions of several societies as they worked to rebuild the lost glory. The same applies to Sokoto people who felt that they serve as a source of identity to all Nigerian Muslims, considering the role Danfodiyo played in transforming the region into a Muslim-dominated one via the popular 1804 Jihad movement in Hausaland. The introduction of the Shari’ah Legal System was viewed as a source of legitimacy to the governments and regimes, as only through it could practices (western) perceived to be antithetical to Islam be overcome while strengthening internal confidence and good governance in Sokoto State.

In detailing out the purpose for the introduction of the *Shari’ah* Legal System in Sokoto State, the governor

highlighted the role of the new legal system in addressing social and political problems of the society.

Similarly, the philosophy and objectives of the newly introduced legal system were also spelt out in the same speech by the then Governor, as indicated below:

The implementation of Shari'ah Legal System will continuously address myriads of social, political and economic problems, which have been bedevilling the people of Sokoto state. All democratically elected leaders; from the grassroots level wield consensus, that the electorates have a preference to the Shari'ah over and above all other laws. (Extract from the Speech of the Executive Governor of Sokoto state during the Implementation of Shari'ah Legal System (2000) in Sokoto state (THE *LEGACY NEWSPAPER*, 27TH December 2000).

In line with the above, in reaffirming the strength associated with the belief system and how the same impact on both behavior, actions, and popular reasoning mostly favours only what is believed to be a long-standing practice, especially where it proves comprehensive enough to define opportunities, as well as sanctions in the interest of regulating and moderating interactions in the society. The comprehensive nature of the Shari'ah legal system has endorsed a sense of confidence in the followers of Islam that only through it will all problems (social, political and economic) be solved. The state government resolved to act by implementing the legal system, to a matter of degree, a testimony of representation at work, as the action is but a manifestation of a unanimous aspiration. From the foregoing, the objective of the Shari'ah Legal System implementation in Sokoto State was to serve as an instrument to bring about social justice. Accordingly, Bafarawa (2000) observes that:

1. The relationship between Shari'ah legal system and moral decadence in the society is that the Shari'ah is an instrument that government can use to wipe away prostitution, drunkenness and other moral vices in the society.
2. The Shari'ah is a vehicle that can be used by the government to bring social justice closer to the people.
3. The Shari'ah is an instrument of satisfying the desire and aspirations of people in a normal setting.

To achieve the above objectives and ensure effective implementation, the Governor proposed strengthening the existing Shari'ah Legal System with a Shari'ah Court to be given all the necessary support by appointing Kadis who will be exposed to various capacity building programmes that would enhance their performance. In addition, the welfare of the Judges will be continuously looked into with a view to ensuring that they are adequately motivated for the fair dispensation of justice in accordance with Islamic jurisprudence. Moreover, Islamic schools and Scholars will be given the desired attention to enable them to produce the needed manpower for the implementation of the Shari'ah. It was appreciated by the government that having competent Kadis is dependent so much on an efficient system of Islamic scholarship.

From Governor Bafarawa's speech, it could be deduced that, he did not give much justification for the implementation of the Shari'ah Legal System apart from the legacy of the past Sokoto Caliphate, showing the Shari'ah as a humane system that brings about justice, equity, fairness, sanity, productivity, peace and enlightenment to any society that takes it as a system of the administration and adjudication of justice. For Muslims, the Shari'ah Legal System provides principles and guidelines that help in having a successful life in this world and the hereafter.

To achieve the above objectives and ensure the expected outcome of the implementation of the Shari'ah, the State government took stock of the requirements for implementing the Shari'ah, such as Courts, the recruitment of the needed manpower, provision of adequate materials for the implementation of Shari'ah Law, and Shari'ah committees, such as a Law to establish Shari'ah Courts to apply Shari'ah Law in Sokoto State.

To ensure full implementation, a committee was set up to ensure success. The committee was to identify the courts to be converted to Shari'ah courts, the cost, extent of repairs and putting the required air conditioning needed for the courts. The Judicial Service Commission (J.S.C.) was to liaise with the Committee to recruit competent and qualified Alkalis or Kadis and staff to man the Shari'ah Courts, structure that was put in place for the implementation was the Department of Religious Affairs under the Cabinet Office soon after signing the "Shari'ah Criminal Procedure Bill" into law by Governor Alhaji Dalhatu Bafarawa. The Department consisted of four units each headed by a director. The units are

- i. The implementation and Monitoring Unit.
- ii. The Da'awah Unit which has the responsibility of the enlightenment of the public, both Muslims and non-Muslims about the Shari'ah.
- iii. The Zakat and Endowment Unit, which is responsible for the collection of Zakat and other levies from the rich to the poor and other services.
- iv. The Community Service Unit, which is supposed to use the proceeds from Zakat and levies to provide services to the community, like settling medical bills, for example.

A Committee was set up to tour the state and appraise the requirements for the successful implementation of the Shari'ah Legal System in Sokoto State. In a similar vein, a Committee was set up to draft a Shari'ah Penal Code Law for Sokoto state. There was also a Law No 2 of 2000, i.e. a Law to Establish Shari'ah Courts to apply

the Shari'ah Legal System in Sokoto state. Finally, the Sokoto State House of Assembly in exercising its constitutional powers passed the draft bill sent to it by the Executive Governor of Sokoto state into Law with effect from 1st October 2000. Hence, the expanded Shari'ah Legal System was introduced with the aim of achieving justice, fairness and stability, in fulfilment of the electorate's aspirations, as expressed by the Governor and enacted by the House of Assembly.

Conclusion

The British Colonialist encounter with the Sokoto Caliphate left a negative legacy of a legal system that is alien to the culture of the people of Sokoto caliphate. The court system of the British colonialist was accompanied by some complex technicalities, bureaucratic procedures and methods of adjudication and inquiry which differed from the precolonial Islamic Shari'al legal system practised during the era of Uthmanu Ibn Fodiyo. The return of democracy to Nigeria in 1999 led to the revival of the Shari'ah legal system in the Muslim-dominated Northern states. Though the implementation of the Shari'ah was beleaguered with a lot of shortcomings and politicisation, most of the people particularly Muslims expressed contentment with the Shari'ah legal system than the imported by departed British colonialists which created an imbalanced social structure that also affects criminal justice administration and those in charge.

References

- Akeredolu, O. (2014). *The Indigenous African Criminal Justice System for the Modern World*. Durham, North Carolina: Carolina Academic Press
- Anderson, M.R. (1996). *Islamic Law and the Colonial Encounter in British India*. London: Curzon Press Ltd. *WLUML Occasional Paper (7)*
- Bello, M. (2001). 'Keynote Address' in Yakubu, A. M., Kani, A. M., Junaid, M. I., (ed), *Understanding Shari'ah in Nigeria Proceedings of the National Seminar on Shari'ah*, Ibadan: Spectrum Limited.
- Bunza, M. U. (1995). *Colonialism, Shari'ah and Muslims: The Northern Nigerian Experience*. *Al-Bayan, Journal of Usmanu Danfodiyo University, Sokoto*.
- Clarke, P.B. (1982). *West Africa and Islam: A Study of religious Development from the 18th and 20th Centuries*. Edward Arnold.
- Doi, A. I. (1984). *Shari'ah: the Islamic Law*. London: United Kingdom, Taha Publishers.
- Karibi Whyte, A.G. (2001). *History and Sources of Nigerian Criminal Law*.