

A SURVEY OF THE ORIGIN AND PRACTICE OF THE ISLAMIC ARBITRATION SYSTEM IN NORTHERN NIGERIA

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Abstract (In English). *This paper examines the origin and practice of the Islamic arbitration system (Hākimiyyah) with reference to Northern Nigeria. The work traces the origin of arbitration and its application in all works of life particularly in areas where the Shari'ah system is practiced in Northern Nigeria. The paper brings into the limelight the history and various practices of Hakimiyyah in Islam. It also analyses Hakimiyyah in Northern Nigeria from the pre-colonial era, the Kanem Bornu empire, and the Sokoto Caliphate especially the role played by the rulers of the various empires in ensuring the Islamic courts plays its role in the arbitration of disputes and other issues among Muslims and non-Muslims. A secondary data approach was adopted in the paper where literary materials relevant to the research were utilized. It was concluded in the paper that the early Islamization of the Hausaland and the way Islam was embraced had led to the quick emergence of strong institutions that made Islam to be the major source of the social and cultural identity of the people in the area. Islamic legal system as one of those social institutions, was the bedrock upon which the Hausa Muslim states were established, particularly during the reigns of the defunct Kanem Borno Empire and Sokoto Caliphate. These two Muslim empires had produced a unique legal system the like of which had existed only during the early days of Islam.*

Keywords: *Shari'ah, Hakimiyyah, Northern Nigeria, Practice, Origin*

INTRODUCTIONS

The Islamic practice of arbitration owns its origin from the pre-Islamic period. The coming of the Qur'an with the new concept of justice (*al- 'Adl*) allowed the

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Prophet to establish a unique system of arbitration that was unprecedented in human civilizations. The Prophet ﷺ was divinely guided on the necessity and importance of justice for human existence. Thus, He ﷺ says:

وَلَوْلَا دَفَعُ اللَّهُ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفَسَدَتِ الْأَرْضُ وَلَكِنَّ اللَّهَ ذُو فَضْلٍ عَلَى
الْعَالَمِينَ ٢٥١

And if Allah did not check one set of people against another, the earth would indeed be full of mischief. But Allah is full of bounty to mankind, Jinn, and all that exists. (Qur'an 2:251).

The above-quoted verse points out that Allah has created human beings with different proportions of power so that those with authority can repel the aggressors and stop their mischief. Moreover, Islam went further to establish a process through which justice could be served in the best equitable, and fairest manner. This can be seen in the verse that commanded the Prophet ﷺ to serve as a just arbitrator or a judge. Allah ﷻ says:

وَأَنْ أَحْكَمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ... (سورة المائدة: ٤٩)
And so, judge (O you Muhammad ﷺ) among them by what Allah has revealed and follows not their vain desires..., (Qur'an 5:49).

This explains that the way to provide the desired justice is by using the revealed Book through the guidance of the Prophet ﷺ. Violating the command of the Qur'an and that of the Prophet on that is tantamount to infidelity and rebellion against the Creator. It is from these teachings of the verse that the idea of *al-Kaḍā'u* (judiciary) or *Nizām al-Kaḍā* (judicial system) took its form and began to develop in the Muslim societies from the time of the Prophet ﷺ to the present.

Hausaland, which was later known as Northern Nigeria, had a long history of the application of Islamic law since its Islamization. The efforts invested in the development of Islam by the two Islamic empires, Kanem Borno and the Sokoto Caliphate, led to the early establishment of a functional Islamic judicial system. The form and structure of which had existed only in the classical Islamic era. Since then, there were gradual developments leading to the emergence of several legal institutions that had helped preserve the system to maintain its objectives for several generations before the colonial conquest. However, when Hausaland fell under colonial control, they suppressed the unique process of the Islamic Judicial system and imposed Western laws on the Muslims. Yet, the system has managed to sustain its essence with less or no impact on its form and structure. This was possible due to the solid foundations upon which the system was built by the founding fathers of the two defunct Muslim empires of the region.

It is against this backdrop, therefore, that this paper surveys the history of the Islamic judicial practice in Northern Nigeria with the view of identifying the phases of its development. It underscores the judicial institutions that emerged within the development of the applications of Islamic law in the region. It also assesses the extent of the function of the Islamic judiciary in the administration of justice. The paper concludes by evaluating the impact of the contributions made to the system by the successive Muslim generations of Muslims in

bequeathing a functional Islamic judicial system that was able to maintain its purpose and preserve the grand objectives of the *Shari'ah*

METHOD

The research approach employed in this paper is a literature study approach. The literature study approach is essentially the same as research in general, but the research data acquired through the literature study approach are secondary data. Finding and gathering references that are pertinent to the topic of this research is the first of the researcher's three processes taken in preparing this paper. Secondly, to fully explain the intersection of the paper, several scientific publications that have been gathered are then analyzed and elaborated. Thirdly, as the final phase, the researchers draw a conclusion that precisely addresses the title of the paper; A survey of the origin and practice of the Islamic arbitration system (*Hākimiyyah*) in Northern Nigeria.

RESEARCH

Concept of Arbitration (*Hākimiyyah*) in Islam

The term *hākimiyyah* is a verbal noun derived from the Arabic root *ḥa-ka-ma*, from which *ḥukm* and *ḥukkām* are derived. The word *Taḥkīm* which means 'arbitration' comes from the same root as *ḥukm*.³ The name *hākīm* refers to one who exercises judicial authority; can be a ruler or a governor.⁴ Etymologically, the pre-Islamic Arabs used the term *hākīm* in referring to a man who, by his nobility of birth, character, age, and wisdom, had won the confidence and respect of his fellow tribesmen to judge between two or more conflicting parties. His main function as an arbitrator was usually to hear all kinds of civil and criminal cases and judge them on the spot. His decision and verbal verdict were enforced not by any identified machinery at his disposal, but by the force of the tribal ethic.⁵

However, the coming of Islam with the new Qur'anic conception of justice there is a remarkable shift both in the usage and application of the term *Al-hākīm*. It, generally, meant that there is none but Allah, who is the Highest Governor, the Ruler, and the Supreme legal authority. This led the Muslims developed the concept of *al-Kaḍā'u* to refer to the process through which the Prophet ﷺ and the Companions applied the rules of Allah to administer justice. Consequently, with the frequent application of the term '*al-Kaḍā'u*' to Islamic judicial processes it began to be recognized as a concept referring to Islamic judicial process or court system across the Muslim world.⁶ Thus, the Arabic term *al-Kaḍā'u*,⁷ literally means to complete, to fulfil, to solve, to compel, to order, and to decide all matters

³ Abu Habib, Al-Sa'ady, *Al-Kamus al-Fiqhi: Luqqatan wa Istilahan*, Dar al-Fikr, Syria, 1988, p. 91.

⁴ Madkur, Ibrahim (ed.), *Al-Mu'jam al-Wasit*, Maktabah al-Shuruq al-Dauliyyah, Cairo, p. 190.

⁵ Jawad Ali, *Al-Mufassal fi Tarikh al-Arab Qabl al-Islam*, vol. 10, Dar al-Saqy, Beirut, 2001, p. 307.

⁶ Thalbahi, Ahmad, *Tarikh al-Tashri al-Isami wa Tarikh al-Nazm al-Kada'iyyah fi al-Islam*, Maktabah al-Nahdhatu al-Misriyyah, Cairo, n.d, p. 218.

⁷ Deeb al-Khudrawi, *Dictionary of Islamic Terms: Arabic - English*, Al-Yamamah Printing and Publishing, Damascus, 2004, p. 86.

which have been ordained.⁸ Legally, the concept has been defined in various ways. Al-Hiṭāb defined it as the judicial characteristic which necessitates the implementation of Islamic law.⁹ Ibn al-Abidin defines it as a process of solving cases and deciding conflicts.¹⁰ And, Al-Kasani defined the term *Al-Kada'u* as deciding on a dispute between two or more persons based on the laws of Allah ﷻ.¹¹ Comprehensively, Sulaiman has seen it as the process of solving claims to reach a peaceful resolution in a dispute that would prevent any clashes between two or more parties through the application of Islamic law.¹²

Origin and Development of Islamic Arbitration (Ḥākimiyyah) in Northern Nigeria

The origin of the Islamic system of arbitration in Northern Nigeria can be traced back to the time of the introduction of Islam in Hausaland. This is because there was no separation between Islam and its legal system. Nonetheless, to identify the process of the development of the Islamic arbitration system in Northern Nigeria, there are two important distinct periods namely, the pre-colonial, and the post-colonial periods.

a) The Pre-Colonial Period of the Islamic Arbitration System

The development of the Islamic Arbitration system in the pre-colonial era can best be studied under the reigns of the two Islamic Empires:

i. **The Kanem-Bornu Empire:** The history of the actual took up of Islamic judicial system started as far back the time of the founding fathers of the Kanem-Bornu Empire, the Saifawa dynasty, who ruled between 891 - 1846 CE. This started when its rulers began to appoint Muslim scholars, mostly itinerants, with Arabic language proficiency as *Imams*, judges, and advisors on judicial matters. Though, Islamic law at the time had a limited framework of application, as the practice of the religion was very narrow and required a little knowledge of the Qur'an to be sufficient for a Muslim to fulfil his religious obligations. Lavers (1982) uncovers that under the influence of a group of religious advisors, *Shari'ah* had brought about changes to many customs held by the Saifawa rulers as well as in the affairs of their followers.¹³ But, as times went by, this had gradually been enhanced as the number of indigenous scholars began to emerge due to the intellectual activities supported by the Kanem Borno rulers up to the time when qualified judges began to be appointed.¹⁴ Though, Alkali believes that the political structure put in place by the Kanem Borno shows that the Islamic system of

⁸ Rohi Baalbaki, *Al-Mawrid: A Modern Arabic-English Dictionary*, Dar el- 'Ilm Lil Malayin, Lebanon, 1995, p. 876.

⁹ Shamsuddeen Abdullahi, Al-Hiṭāb, *Mawāhib al-Jalil Li Sharh Mukhtasar al-Khalil*, Dar al-Ālim al-Kutub, Jeddah, vol. 8, 2003, p. 64.

¹⁰ Ibn al- 'Ābidin, *Hashiyah Radd al-Mukhtār 'ala al-Durr al-Mukhtār*, vol. 5, Beirut, 2000, p. 352.

¹¹ Alā al-Din, Al-Kāsāni, *Badā'ī al-Ṣāni' fi Tartīb al-Sharā'ī*, Dar al-Kitāb al-Arabi, Beirut, vol., 7, 1982, p. 2.

¹² Abdullahi Sulaiman, Al- 'Ajalani, *Al-Qadā' bi al-Qarā'in al-Mu'āsarah*, Imam Muhammad bin Saud Islamic University, Riyadh, 2006, p. 60.

¹³ John E. Lavers, "Kanem and Borno under Three Dynasties: Some Aspects of Change and Development c. 700 – 1900 AD", Department of History Seminar Series, Bayero University, Kano, 1982, p. 3. Cf. Arewa House, Kaduna, Manuscript No. *PJ81/27/TA – 5*, p. 10.

¹⁴ H. R. Palmer, *Sudanese Memoirs*, Frank Cass, London, 1967, pp. 78 – 81.

arbitration existed in Borno as far back as the third century *Hijri*/ninth century CE. At that time, Islamic law had been administered with success and was provided administrative workability in a form of a court system called the *Majlis* (council). The *Majlis*, according to him, had twelve members headed by the *Mai* and assisted by *Mainin Kenandi*, who was second in rank to the *Mai* and served as his Islamic legal adviser. The duties of *Mainin Kenandi* included the interpretation and definition of legal terms in conformity with Islamic law. *Mainin Kenandi* worked closely with *Talba* who was also like a magistrate and responsible for the execution of justice on behalf of the *Mai*. The *Majlis*, then, began to designate from among its members a chief *Kađi* that fell upon the *Mainin Kenandi*, to work with other judges for the administration of justice in the entire state.¹⁵

Moreover, a fifteenth-century document titled *Kitab al-Idarah*,¹⁶ indicates that the judges under the Saifawa regime were categorized based on their specific jurisdiction as; judges with jurisdiction in criminal matters only, judges on public complaints only, judges on women's affairs, judges on public interests, judges on murder cases, judges on inheritance only, judges on land and building and judges over other matters not listed above. The document went further to show that the composition of judges differed from one jurisdiction to another. For instance, the composition of judges with jurisdiction over murder cases consisted of not less than ten judges and required that such judges must be men of high integrity, piety, and free from the influence of the *Mai*. It also shows that no judgment was to be executed without the consensus among all members of the council including the *Mai*. The *Mai* could not oppose the verdict of the twelve members of the *Majlis* unless on concrete evidence which must not contradict the Qur'an and *Sunnah*. This, therefore, gives that the Islamic system of arbitration established in Kanem Borno was very early and complex as it was guided by the principles of the Qur'an and *Sunnah* of the Prophet ﷺ.

Still, under the Kamen Borno and particularly during the reign of Muhammad al-Amin al-Kanemi, the founder of the al-Kanemi dynasty, there was a slight modification to the structure and the process of the system. All the courts that existed under the Saifawa were made to be lower courts, and the murder court was made to be a special court. Appeals from the lower courts were laid before the magistrate on any issue under its jurisdiction. The magistrate court was made to be headed by *Talba* and served as the sole court of its kind in the whole state. From the magistrate, an appeal can be laid before the *Majlis* (council). Thus, the *Majlis* was the highest court of appeal for the whole of the states. As the highest court of appeal, cases were normally referred to the *Majlis* from the lower courts, and sometimes aggrieved citizens could directly put forward their complaints. It is worth noting that Al-Kanemi retained the twelve members of the *Majlis* including the two judicial functionaries of the Saifawa who *Kađi* were *Mainin Kenandi* and *Talba* serving as legal advisers or *Mufti* and court clerks (*Katib*) respectively. On this, Hamid concludes that the Islamic legal system under al-Kanemi was more

¹⁵ Muhammad Nura Alkali, "The Political System and Administrative Structure of Borno under the Saifawa *Mais*", in Muhammad Nura Alkali and Yusuf Bala Usman (eds.), *Studies in the History of Pre-colonial Borno*, Northern Nigerian Publishing Company, Zaria, 1983, p. 110.

¹⁶ Muhammad Yanbua ibn Ali ibn Alhaj Dunama, Ibn Ali Al-Saifi, al-Humairi, al-Maliki, *Kitab al-Idarah*, **Manuscript No. 412**, Bayero University Library Documentation Centre, Bayero University, Kano, p. 19.

organized than that of Saifawa and the Hausa states.¹⁷ The above testimonies proved that as far back as the time of the Kanem Borno the Islamic arbitration system had been instituted and was made to function effectively. It could also be observed that, as a recognized state institution, it had served the purpose and aspirations of the people in the administration of justice for a long period down to the reigns of the descendants of the Al-Kanemi; and even beyond as accounted by Kyari.¹⁸ However, in Hausaland, the most significant progress in the development of the structure of courts evolved during the visit of *Shaykh* Abdulkarim al-Maghili to Kano during the reign of Muhammad Rumfa (1463-1499).¹⁹ At first, Al-Maghili found that there were some Islamic scholars but there were no functional Islamic institutions, judiciary inclusive. He, therefore, worked for the appointments of the *Imam* for Friday prayers as well as a judge (*al-Kaḍī*). He also helped in the establishment of the *Shari'ah* court, which was located at the palace of the Emir. Al-Maghili was, then, made to supervise the activities of the court for proper adjudications. He later wrote his work '*Wasiyat al-Maghili ila Muhammad bn Ya'qub*, who was popularly known as Muhammad Rumfa explaining to him the rules of Islamic law. Similarly, his treatise, *Taj al-Din fi-ma Yajibu 'ala al-Muluk* (The Crown of Religion Concerning the Obligations of Princes) which he had written at the request of the Emir, contains principles of the Islamic law that specifically outlined the roles of Islamic court and the functions of the institution of *Mazālim* in the dispense of justice among others.²⁰ When Al-Maghili moved to Katsina and was eventually appointed as a *Kaḍī*, his activities gave a practical demonstration of an ideal meaning of a judge and administration of justice in Islam. Thus, the activities of Al-Maghili and the subsequent appointments of his students as judges in Katsina as well as in Kano had left behind the legacies that strengthened the operations of the *Shari'ah* courts in Hausaland.²¹

This, therefore, laid the foundations of the Islamic judicial system that later came to be established in the entire Northern Nigeria. Consequently, the system later came to be known and extended to other parts of Hausaland. And, as there was an increase in the number of Muslims and development in the practice of the religion in towns and villages within the Hausaland, there were also changes in the structure of the existing *Shari'ah* courts. Yet, the predominant practice was that the Islamic judicial system was under the control of the heads of villages and cities with their councils, usually more than half-a-dozen of reputable men, one of whom must be the *Alkali* of the area. This had existed for many years before the coming of the Sokoto *Jihad*.

However, Sodiq (2017) observed that the long period of application of Islamic law in Hausaland had resulted in the remarkable upgrade of the structure of the *Shari'ah* court, particularly in the effective use of the hierarchical system

¹⁷ Algoni Idris Hamid, "The Administration of *Shari'ah* Law in Northern Nigeria, 1900 -1976", M. A. Thesis, Department of Islamic Studies, Bayero University, Kano, 1987, pp. 24.

¹⁸ Kyari, Mohammad, *Borno Under Rahib Fadl Allah*, 1893 – 1900: The Emergence of a Predatory State", in *Paideuma: Mitteilungen Zur Kulkurkunde*, vol. 43, 1997, pp. 281 – 300.

¹⁹ Mervyn Heskett, *The Development of Islam in West Africa*, Longman, London, 1984, p. 54.

²⁰ Abd al-Aziz Abd Allah, Batran "A contribution to the Biography of Shaikh Muhammad ibn Abd al-Karim ibn Muhammad (Umar-a 'Mar) al-Maghili, Al-Tilimsani", *The Journal of African History*, vol., 14, No., 13, 1973, pp. 381 - 394.

²¹ A. H. M. Kirk-Green, "Barth's Travels in Nigeria: Extracts from the Journal of Heinrich Birth's Travel in Nigeria, 1856-1885", *The Journal of Modern History*, vol. 34, No., 4, 1962, pp. 31-36.

between the *Alkali* court and the Emir court. He also appraised how the courts were consistent in their application of the *Maliki* codes of law, which he believes negated the impact of the activities of some emirs who often resorted to native laws in the adjudication of certain matters. Although, by the standard of the time, he sees that as a great achievement in the history of the application of Islamic law in Northern Nigeria.²²

ii. The Sokoto Caliphate: With the coming of the Sokoto caliphate into existence, the *Jihad* leaders felt the need to review the operation of the Islamic judicial system, particularly the overdominance of its operations by the Hausa Emirs. They worked assiduously in reviving the essence for which Islamic law is revealed and reorganized the structure of the existing courts to function optimally in the administration of justice. For that, *Shaykh* Uthman bn Fodi together with his brother, *Shaykh* Abdullah bn Fodi, and his son, *Sultan* Muhammad Bello, wrote extensively explaining the reasons and purpose of *Shari'ah*, and the manner it must be established.²³ These helped the triumvirate succeed in establishing the most efficient and functional judiciary. At that, they ensured that only the most qualified *Kadis* (judges) were appointed and accorded the full authority of the application of Islamic law in all aspects of the Muslims in accordance with all its principles based on the *Maliki* School of Law.²⁴ In addition, *Shaykh* Uthman created the office of the *Muhtasib* (Court Inspector) for the smooth running of courts and trying cases. The *Muhtasib*, accordingly, was a new introduction to the Islamic polity with a wide scope of responsibilities. The duties of *Muhtasib* included seeing the appointment of the right judges and ensuring the smooth trying of cases without unnecessary delay.²⁵ To show the importance of the judiciary, it was considered the second pillar after *Wizarah* (premiership) in the political structure of the caliphate. On his part, *Shaykh* Uthman, in his *Bayan Wujub al-Hijrah* outlined the following as the fundamental roles of whoever was to be appointed as *Kadi* (a judge):

1. To settle cases between litigants by mutual reconciliation or by compelling them to accept a mandatory judgment.
2. To prevent oppressors from taking things by force, or from violating the law.
3. To support the oppressed and help everyone get his due.
4. To uphold the statutory penalties and carry out the command of Allah.
5. To hear the cases of homicide and injury.
6. To safeguard the property of orphans and the insane, and to appoint a legal guardian over them.
7. To look after the estate of mort man (*Ahbās*) and execute wills and bequests.
8. To contract marriage for women, if they have no guardian (*wali*), or if the guardian has stood in the way of their marriage.
9. To take care of the public utilities, such as the roads of the Muslims,

²² Yushau Sodiq, *A History of the Application of Islamic Law in Nigeria*, Palgrave, Texas, 2017, p. 30.

²³ Murry, Last, *Sokoto Caliphate*, Longman Green, 1967, pp. 49 - 50.

²⁴ Murry, Last, "Aspects of Administration and Dissent in Hausaland, 1800 – 1968", in *Journal of the International African Institute*, vol. 40, no. 4, 1970, p. 348.

²⁵ Yusuf Abba, "The 1804 Jihad in Hausaland as Revolution", in Yusuf Bala Usman (ed.), *Studies in the History of the Sokoto Caliphate*, aBello University, Zaria, 1979, pp.20 -24.

10. To command good and forbid evil by word and deed.²⁶

He, similarly, outlined in detail the processes of the operations of court in his books such as *Irshād al-Ummah ila Taysir al-Millah*, *Tauqif al-Muslimin ala Hukm al-Mujtahidin* and *Hidayat al-Tullab*. Thus, in his book *Najmu al-Ikhwan*, he enumerated the achievements of the caliphate in the appointment of judges vis-à-vis the successes recorded by the judiciary under the caliphate, particularly in applications of *Hudud*.²⁷

Shaykh Abdullahi, in his book *Diya' al-Hukkām*, has equally highlighted the objectives for designating someone to function as a judge. He states that the major responsibility of a *Kaḍī* is to settle disputes, prevent oppression, aid the oppressed, and protect rights. The book also points out the qualities of a judge to include honesty, truthfulness, willingness to apply the laws of Allah, and not to accept gifts for whatever reason. Being a judge, according to him, is a responsibility that attracts heavy rewards than any other acts of religion. He, therefore, submits that men of these qualities are few in society.²⁸

Still, in *Diya' al-Siyasāt*, *Shaykh Abdullahi* summarized the code of conduct of judges applicable under the defunct Sokoto Caliphate. That a judge must be a male, freeborn, adult, and free from any deformity. He is also required to have excellent judgment and be intelligent. A judge is mandated not to associate with clueless and confused thinking persons. It is also required for judges to be dignified and patient and seek advice from the learned. He must have no disreputable friends and be a citizen who has never been punished for a serious offense. He must also be one who has no criminal record. He should be modest not to the extent of being weak. The book went further to say that a judge should always see himself as a role model and perform all the duties required of him by the laws of Allah. He must be diligent and safeguard himself from doing things that will bring him disrepute and must not collect presents except that of his son, his father, his uncle, his cousin, or someone from his relatives. He should not attend any party except wedding ceremonies, and even then, he should not eat anything. A judge is required to avail himself to everyone, whether rich or poor. He must be in his office at a fixed time and should not make judgments when he is feeling hungry, thirsty, or annoyed. He must not listen to one side of a dispute without the other person present, nor must he judge a case involving a close relative. He should be visiting the prison to examine records and should set free anyone who has been imprisoned without proper conviction in a court of law. A judge is required to probe court officials, to investigate their behaviours to ensure that they have not inconvenienced any innocent person. Judges must base their judgments on the injunctions of the Qur'an, *Sunnah* and *Ijmā'*, or any known

²⁶ Uthman bn Foduye, "Bayanu Wujub al-Hijrah 'ala al-Ibad wa Nasb al-Imam wa Iqamat al-Jihad: Explaining the Obligation on People to Emigrate, and Obligation to Appoint an Imam and to establish Jihad" A. B. Luwa (trans.), in S. Musa (ed.), *Selected Writings of Sheikh Othman Bn Fodiyo*, Vol. 3, Iqra' Publishing House, Gusau, 2013, pp. 71-73.

²⁷ Uthman bn Foduye, "Najm al-Ikhwān Yahtadduna bihi fi Umūr al-Zamān: Enlightening Brothers", Abubakar Buba Luwa (trans.), in: A. B. Yahaya (ed.), *Selected Writings of Sheikh Othman Bn Fodiyo*, Vol. 3, Iqra' Publishing House, Gusau, 2013, pp. 312 – 313.

²⁸ Abdullahi bn Foduye, *Diya' al-Hukkām: Guide to Administrators*, Shehu Yamusa (trans. & ed.), NP, 1975, Kano, p. 12.

established principle. He concludes that under no circumstance should a judge trust his own feelings and make a judgment accordingly.

Similarly, *Sultan* Muhammad Bello, who started as *Nadhir* (Court Supervisor) during the time of *Shaykh* Uthman, was fully abreast with the requirements of a functional judiciary and its importance in an Islamic state. When later he became a Caliph, he attached importance to systematizing the system by making the judiciary an independent organ of the government. As Caliph, he served as the overall *Kaḍi* where he was assisted by two *Muftis* in hearing appeals and giving *fatwas* to specific legal questions.²⁹ In order to improve the functions of the judiciary, he created additional new courts with specific functions and jurisdiction in all the emirates of the caliphate. Sa'ad discovers that *Sultan* Muhammad Bello had added new judicial offices with new responsibilities, such as *Alkalin Kuka*, who was charged with civil suits in matters of divorce, inheritance or debt arising in business. *Alkalin Daji* was charged to oversee all issues involving land disputes such as trespass and land occupancy. The *Wali al-Maḗālim* (chief judge) was made to ensure that Islamic laws were correctly administered through the review of the most important or controversial decisions of *Alkalai*. There were also the institutions of *Hisbah*, *Wilayat al-Shurṭah* and the *Wizarah*, who in addition to his administrative functions also acted as inspector of all courts.³⁰ Moreover, Ibrahim points that the *Maḗālim* courts that had emerged in the mid-nineteenth century under the Caliphate functioned independently to hear cases against powerful state officials that might include even an emir, a *Kaḍi* or a chief *Kaḍi*.³¹

It is also worthy of note that the judicial process established during the Sokoto Caliphate strictly enforced the system of hierarchy and maintained that the authority to impose and execute the *Shari'ah* punishment was tightly an emblem of power attached to the Caliph; so much so that the caliph can even punish a *Kaḍi* as well as confirming or annul the judicial rightness or otherwise of execution by an Emir. The strict adherence to the above principles coupled with the full involvement of emirs, particularly those who were initially students and the flag bearers of *Shaykh* Uthman to function as judges and their courts served as a court of appeal for cases coming from the *Alkali* courts, had helped the Islamic judiciary to worked efficiently during the Sokoto Caliphate.³² On this, Hamid appraised the contributions of the Sokoto *Jihad* leaders to Islamic judiciary, where he says:

At the period of Sokoto Caliphate courts were established all over the emirates for the delivery of justice in accordance with the Shari'ah. The courts continued to apply Shari'ah in those emirates, particularly in places where the people are predominately Muslims for many

²⁹ S. J. Hoeben and A. H. M. Kirk-Greene, *The Emirates of the Northern Nigeria: A Preliminary Survey of their Historical Tradition*, Oxford University Press, London, 1966, p. 10.

³⁰ Sa'ad Abubakar, "The Emirate-type of Government in the Caliphate", in *Journal of the Historical Society of Nigeria*, vol. VII, No. 2, 1974, pp. 211 – 229.

³¹ Yakubu Yahaya Ibrahim, "The Application of Radd al-Maḗālim in the Historical Perspective: A Case Study of Sokoto Caliphate", A PhD. (unpublished) Thesis, Submitted to the Department of Islamic Studies, Usmanu Danfodiyo University, Sokoto, 2000, p. 53.

³² Murry Last, *The Shari'a in Context: People's Quest for Justice Today and the Role of Courts in Pre- and Early-Colonial northern Nigeria*, National Archive, Kaduna, Nigeria, **PJSI/13/129**, pp. 4-5.

decades. The standard was no doubt very high and comparable to any other civilized society.³³

With the above testimony, one would conclude that the *Jihadists* left a well-established Islamic legal system whose operations were simple, easy, and effective not only in Sokoto but in the entire Muslim-dominated areas of the Hausaland. For this reason, it would be argued that the impact of the Sokoto Judicial system lasted for centuries to the present times.

b) The Post-Colonial Period of the Islamic Arbitration System

The fall of Sokoto Caliphate under British colonial control in 1903 brought a drastic change in both the form and the structure of the operations of the Islamic Arbitration system. This started when the Muslim rulers of Hausaland were compelled to adopt the British authority over the northern part of Nigeria under the principle of necessity. During the period, Islamic law was officially recognized under the title of 'native law and custom', which permitted flexibility of its application according to the views of Emirs and *Kaḍis*.³⁴ At first, Islamic law is allowed to be applicable to all matters including the Islamic rules on crime and capital offences. As such, Islamic law is accepted as the law of the locality that provides adequate legal justification for the application of pure *Shari'ah* in favour of local customs which were noticeable in greater or less degree in day-to-day work of Muslim courts of the time.³⁵ Later on, the British colonialists strategically began to impose sanctions in the judicial operations of the Muslim courts, thereby giving them a stronger position to effect changes to suppress the application of Islamic law or at least it impacts on the life of the Muslims.³⁶ They did that by confiscating the power to appoint and dismiss judges and then introduced a chain of appeal in the Islamic Judicial system by upholding appellate jurisdiction over the decisions of the emir's judicial councils and that of *Shari'ah* courts. Through that, they started overturning *Shari'ah* courts' judgments from being effective and execution. The case of *Tsoho Gubba Vs Gwandu Native Authority* is the most typical example. Therein, Tsoho Gubba had been convicted of culpable homicide by the emir of Gwandu's judicial council based on Islamic rules. The British colonial administration used that as an opportunity to take up total control of the Islamic judicial system by setting aside the application of Islamic law based on the claim that it is repugnant to natural law, equity, and justice.³⁷ This left the Muslims of northern Nigerian victims of defeat in their own legal system and in their own domain.

This made the British review the status of Islamic law and the system of its application by creating a parallel court with the *Shari'ah* courts. The *Shari'ah* courts are made only to deal with personal and family law cases and the civil courts are to deal with criminal law according to a single code applicable to all

³³ Hamid, "The Administration of *Shari'ah* Law in Northern Nigeria, 1900 -1976...", pp. 94.

³⁴ Peter K. Tibenderana, "The Irony of Indirect Rule in Sokoto Emirate, Nigeria, 1903-1944", *African Studies Review*, vol. 31, No. 1, 1978, pp. 67-92.

³⁵ J. N. D. Anderson, *Islamic Law in Africa*, Routledge, London, 1955, pp. 171-178.

³⁶ Joseph P. Smaldone, *Warfare in the Sokoto Caliphate: Historical and Sociological Perspectives*, Cambridge University Press, Cambridge, 1977, p. 123.

³⁷ Joseph Kenny, "Shari'a and Christianity in Nigeria: Islam and a 'Secular' State", in: *Journal of Religion in Africa*, vol. 26, Fasc., 4, 1996, p. 354.

Nigerians.³⁸ In 1956, a Native Court Bill was passed which made a distinction between Muslims and non-Muslims and provided procedures for cases involving both categories. In 1957, the Northern Muslim Court of Appeal was established with limited jurisdiction to hear appeals of the lower Shari'ah courts, and in 1958 the Northern Regional Council appointed a panel of jurists to make recommendations on the position of the application of Islamic law in the northern region of the country, and the panel recommended among other things that a Penal Code should be introduced.³⁹ The Penal Code was finally introduced in 1959. By its contents and procedures, it is essentially an English code meant to replace the erstwhile *Maliki* code of laws used by the judges of Shari'ah courts in the region for judgments and adjudications.⁴⁰

At the time when Nigeria got her independence in 1960, changes were made in the application of *Shari'ah* in the northern part of the country. Some emanated directly from the newly established Penal Code, while others with the structure of the Nigerian legal system that affects functions of the Islamic judiciary and its institutions. As regards the Penal Code, it laid out rules and procedures with penalties for certain criminal acts and stripped jurisdiction of criminal law from the *Shari'ah* courts. Hence, *Shari'ah* and its courts were to deal with personal law only. On the structure of the *Shari'ah* Courts, *Shari'ah* Court of Appeal was established in Kaduna, the center of administration of northern Nigeria. The court had a Grand *Kaḍi*, a Deputy Grand *Kaḍi*, and two other judges who were learned in Islamic law. However, the jurisdiction of the court was limited to cases governed by Muslim personal law.⁴¹ Muslims felt that the Penal Code was a colonial imposition intended to suffocate Islamic law in the land that it had existed for centuries and bound the people as one *Ummah*, which served as their identity and symbol of their civilization. For that, they continued struggling for the restoration of its implementation as it were during its heydays. There had been successes, but not immediately until when the country returned to civilian rule in 1999 that twelve out of the nineteen states of the Northern region enacted legislation on the reimplementation of Islamic criminal law to mark, once again, the restoration of full-scale application of Islamic law in the region.⁴²

CONCLUSION

The early Islamization of Hausaland and the manner it was embraced had led to the quick emergence of strong institutions that made Islam to be the major source of the social and cultural identity of the people in the area. Islamic legal system, as one of those social institutions, was the bedrock upon which the Hausa Muslim states were established, particularly during the reigns of the defunct Kanem Borno Empire and Sokoto Caliphate. These two Muslim empires

³⁸ Philip Ostein and Albert Dekker, "Sharia and National Law in Nigeria", in: Jan Michael Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Countries in Past and Present*, Leiden University Press, Amsterdam, 2010, p. 558.

³⁹ Abdulmajeed, Hassan-Bello, "Shari'ah in the Nigerian Constitutions: Examining the Constitutional conferences and the Shari'ah Debates in the Drafts", in *Al-Ahkam*, vol. 29, no. 1, 2019, pp. 1-26.

⁴⁰ Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion and Judicial Practices ...*, p. 87.

⁴¹ Ogechi, E. Anyanwu, "Crime and Justice in Post-colonial Nigeria: The Justification and Challenges of Islamic law of Shari'ah", in *Journal of Law and Religion*, Vol. 21, no. 2, 2006, pp. 315-347.

⁴² Gummar J. Weimann, "Divine Law and Local Custom in Northern Nigerian Zinā trials", in *Die Welt des Islam*, vol. 49, issue 3 & 4, 2009, pp. 429-465.

had produced a unique legal system the like of which had existed only during the early days of Islam. The outstanding features provided to the Islamic judicial system by those Islamic empires had allowed it to function efficiently in the administration of justice for several generations before the colonial conquest. However, despite the amalgamation of the Hausaland by the British colonialists with other areas to constitute the geographical entity called northern Nigeria, and the modifications of the Islamic judicial system to be in tune with the Western legal system and its methods, the system maintains the core values that which it was built upon, that is equity and justice. Thus, the changes brought to the system might have an impact on the form and structure of the operations of the Islamic legal system of northern Nigeria, yet the system managed to maintain its essence by upholding strictly to Islamic principles guiding its purpose and objectives for which it was divinely revealed.

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