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Appraisal of the conflict between sharia law and rule of law on rights of women in Nigeria

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ABSTRACT: *The study " appraisal of the conflict between sharia law and the rule of law on rights of women in Nigeria is inclined to reviewing the disagreement or incompatibility arising from injustices against women by the sharia law, which the rule of law is at variance with. Through its organ, the United Nations Organization had declared that all human beings, irrespective of gender, colour are entitled to enjoy the content of Universal Declaration of Human Right effective 1948. Consequently, every bonafide member of UNO, including Nigeria, must not only enshrine the declaration in its constitution but must also enforce and sustain such enforcement. The aforementioned exigency informed this study seeing that many states in the Nigerian Federation, especially from the north are fast adopting sharia law.The study was anchored on positive legal theory to critical explain the need for law in the society.Basically, data was elicited through secondary source. Findings revealed inter alia; that sharia law reduced the constitutional rights of women to live a dignified life; the rule of law was not very vociferous against the identified obnoxious practices of sharia law against women in northen Nigeria. Following the findings made, the study concluded that the liberation of women from the shackles of sharia law in Nigeria depends largely on the willingness of the rule of law to enforce the result of repugnancy test against sharia law where it applies. The study recommended interalia; A detailed review of sharia law in Nigeria which are not compatible with the provisions of the constitution; Constitutionalization of affirmative action for women in Nigera and Nigeria should diametrically adopt the provision of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to guide in enforcing rights of women against all odds in Nigeria.*

KEYWORDS: Rule of law; Sharia law; Constitution; right of women; Nigeria.

INTRODUCTION

Sharia or Islamic law is predominantly practiced in Islamic Countries. However, it is practiced in states in the Northern part of Nigeria. Nigeria is a Federal State with written and rigid constitution which is Supreme to other legal documents and practices. In Nigeria, the rule of law is the constitution of the Federal Republic of Nigeria, 1999 as amended, provides and is expected to enforce the provision in its preamble that unity, peace, principles of freedom, equity and justice should be enjoyed by all citizens without discrimination[1]. Insofar as the constitution is the Supreme document, from where other statutes in Nigeria draw their strength, it should be able to protect the rights of all citizens, both male and female, no matter the location and religious practice of the area or areas. As a multi-ethnic and multi religious nation, the practice of or imposition of religion related law by any part of Nigeria against women without respect to the concept of freedom as enshrined in the constitution appears to be an affront to the Supreme document. The apparent silence of rule of law on the impunities against women by *Sharia* States in Nigeria has been interpreted as a weakness. For instance, the Civil Liberties Organization (CLO) reported that an 18 year old nursing mother, ***Tawa Bello*** was given ten strokes of cane after alleged conviction for wandering and prostitution by a *Sharia* Court in *Guassau*, the Capital City of *Zamfara* State. Two fundamental tenets of democracy; fair-hearing and legal representation were denied her[2].

Questions like for what reasons should *Sharia* law be allowed in a secular state with a constitution, why is it targeted at the freedom of women in the country, and perhaps what could be the motive of the silence of the constitution continues to agitate the minds of concerned Nigerians? As a democratic state, the principles of natural justice, equity and good conscience should be regularly upheld by the rule of law and any law that fails the repugnancy test ***vis-à-vis*** the mission of the constitution should be declared *ultra-vires*[3].

Statement of Problem

In the legal system of every democratic state, fair hearing remains a ***sine qua non***. This stands because it is a fundamental aspect of democracy and judicial uprightness. The constitution of Nigeria and the *Sharia* Penal Code appear to be on collusion course as some states especially in the northern part of Nigeria adopt it to the detriment of the freedom of Nigerians living in such section of Nigeria. Women have been the worst victims of such obnoxious *Sharia* Laws as many of them have been forcefully shut out of social life, marital subjugation, denied fair hearing, denied access to conventional education, and thus made to exist at the mercy of male folks. The inhuman treatments against women are obvious negation of the Universal Declaration of Human Rights (1948) where all nations were

[1] *The preamble of constitution of Federal Republic of Nigeria,1999(as amended)*
[2] *Section 36, constitution of the Federal Republic of Nigeria, 1999(as amended)*
[3] *In Nwebo O.E. (1985), Law and Social Justice in a developing society*

mandated by the United Nations Organizations to treat all humans (man or women) equal in the eyes of the law. The neglect of this declaration by a section of Nigeria through the practice of *Sharia* law has jeopardized the Principals of Rule of Law, and thus put serious questions on the effectiveness of the Nigerian constitution or the democratic nature of Nigerian legal system. The obnoxious nature of *Sharia* Law has perpetually subjected the women folk to a position where they are to be seen, not to be heard, thus against the Rule of Law, causing them to either have no say or contribute to shaping matters that affect their existence.

Objectives of Study

Based on the problems stated, the study intends to examine;

1. The extent the rights of women are affected by the practice of *sharia* law in Nigeria.
2. The position of Rule of Law on the existence of *sharia* law in Nigeria.
3. Effects of *sharia* law on democracy and the judicial system in Nigeria.

Research Questions

The following research questions form the basis of the investigation.

1. To what extent are the rights of women affected by the practice of *sharia* law in Nigeria?
2. How does rule of law respond to the existence of sharia law in Nigeria?
3. How does *Sharia* law affect democracy and the judicial system in Nigeria?

METHODOLOGY

The study adopted doctrinal research method. The major source of data for the study is secondary or library source. It involves already processed data by other researchers on the topic. It includes legal documents or law reports, government gazette or government white papers, textbooks, published articles; lecture notes etc. Availability of the aforementioned sources was instrumental to critical and logical examination the topic of study. The study adopted content analysis as method of data analysis. The content of data from these sources is systematically and logically analyzed to address the objectives and questions raised by the study.

Theoretical framework

The importance of theory or theoretical framework to academic studies cannot be over emphasized. It gives explicative note on the fundamental variables under study. Theory explains, applies and prescribes for more empirical understanding of social phenomena[4]. It is in view of the aforementioned that it becomes apposite to expatiate on the following legal theories.

[4] *Makodi .B. (2011). Fundamentals of Political Inquiry. Quintagon Publishers, Enugu*

Positive law

Positive law is one with specific intent, usually to create or advance changes capable of positively affecting its environment. They are laws that are man-made or made by man, requiring specific action. The legislature is usually responsible for the enactment of positive law. It comprises statutes, codes of conduct, and regulations[5]. Governments create positive law to guide them in responding to the numerous, increasing and complex needs of the state[6]. Furthermore, according to Nwebo, (1995) positivist conceptualizes or sees law as;

"Man-made" or "posited", in accordance with laid down procedure for that purpose and its validity can only be judged by the requirement of compliance with such procedure It is a scientific method in reaction to the gap or lacuna inherent in natural justice philosophies[7].

On the concept of positive law, there is a belief that existence and content of law is predicated on the social facts, not on the merits of law. Responding to the foregoing, ***John Austin***, a prominent English Jurist opined that;

"The existence of law is one thing, its merit and demerit another. Whether it be or be not is one enquiry, whether it be or be not conformable to an assumed standard, is a different enquiry[8].

From the etymological perspective, ***Hart*** maintained that positivism, as used in England and American can stand for any of the following submissions;

- ❖ The contention that laws are commands of human beings;
- ❖ The contention that there is no necessary connection between law and morals or law as it is and ought to be;
- ❖ The contention that the analysis of legal concepts is worth pursuing and to be distinguished from historical inquiries into the causes or origins of law, from sociological inquiries into relation of law, other social phenomena;
- ❖ The contention that a legal system is a closed logical system in which correct legal decisions can be deduced by logical means from predetermined legal rules without reference to social aims, policies, and moral standards;
- ❖ The contention that moral judgments cannot be established or defended, as statement of facts can by rational argument, evidence or proof[9].

The positive law has its strength in the principles of certainty, predictability, orderliness and bureaucratic proclivity. These tenets enable it to effectively tackle social needs of the

[5] *Wikipedia (2017) - https:// en.,.wikipedia.org*

[6] *https: //www.colelearning.net (definitions of positive law)*

[7] *Nwebo, O.E. (1995) Law and social justice in a developing society (A critical Approach). International Universities Press Ltd. Owerri. p.9.22.*

[8] *Austin J. (1832). The province of Jurisprudence determined, in Wilfred E. Rumble (ed), Cambridge University Press doi:10 1017/CBO9780511521546*

[9] *Hart, H .L.A. (1979). The concept of law. Impression – 5th E.L.B.S. In chapter V.*

public, including actualization of utilitarianism. One of the social needs positive law is expected to resolve or provide is the invalidation of any section of *sharia* law that truncates or infringes on the fundamental human rights of women in Nigeria, and elsewhere *sharia* legal system is practiced.

In his pure theory of law, which is equally a theory of positive law, ***Hans Kelson*** introduced a well empirically structured discourse of positive law which was visibly devoid of ethical or political interferences in legal judgment. ***Hans Kelson*** submitted that pure theory of law is akin to positivist philosophy, and thus maintains ***inter alia;***

"As a pure theory, it is exclusively concerned with the accurate definition of its subject matter. It endeavours to answer the question, what is the law? But not with the question, what it ought to be?[10].

It is therefore apparently deducible that the major substance of positive law is not to uphold influence of idiosyncratic disposition in legal matters; neither is it to enthrone subjectivity, idealism, and natural law, but to approach legal matters from the realist perspective, capable of eliciting strategies with which social conflict situations could be resolved.

Sociological School

The sociology of human beings in the environment is an inevitable phenomenon. The inevitability of these social interactions further makes conflict of interests largely unavoidable. The aforementioned certainly requires introduction of law as a means of social control in the society. The sociological school of law is therefore, strategically introduced to perform social functions in society. The functions could be resolution of disputes between individuals, or between individual and government; and effort to minimize or for de-escalation of conflict situations in the society. The effectiveness of law as a sociological agent is usually anchored on its ability to understand the social-cum-cultural leaning or values of the society in question. This will position it to solve instead of escalating the conflict situation.

It is a requisite at this juncture, to observe the inputs of the foremost doyen of sociological jurisprudence and a German legal scholar, ***Von Ihering***, who strongly advocated for social utilitarianism, as against ***Jeremy Bentham's*** and ***John Stuart Mill's*** individual utilitarianism. He opined that the essence of law in the society is to protect the interests of society in the event of any conflict. He described society as the centre of human existence, thus the protection of the society translates to protection of individuals in the society. Therefore, a conflict–free society is the major pursuit of sociological school of law. Expanding on the subject matter, ***Von Ihering*** reiterated thus;

[10] *Hans K (1934) The ……. Theory of \law liking vol 50 and51 L.Q.R (1934-1935)*

"Law is the sum of the conditions of social life .In the widest sense of the term, as secured by the power of the state through the means of external compulsion[11].

In his contributions to the sociological school, ***Ehrlich*** a jurist of Austrian nativity drew attention to the social fact of law, citing that attention to such will help the law makers (legislators) to understand and enact laws that will consider the innermost feelings of the society. Affirmatively, ***Ehrlich*** said thus;

At present as well as at any other time, the centre of gravity of legal development lies not in legislation nor in juristic science, nor in judicial decision, but in society itself[12].
Corroborating the submission of ***Ehrlich***, ***Roscoe Pound***, one of the sociological jurisprudence influences, construes law as functioning as social engineer. In other words, the real essence of law is to assume the task of balancing interests in the society. To this effect ***Roscoe Pound*** has this to say;

Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands either through securing them directly and immediately, or through securing certain individual interests or through delimitations or compromises of the greatest total interests or to the interests that weigh most in our civilization, with the least sacrifice of the scheme of interests as a whole.[13]

It is therefore incontrovertibly certain that ***Roscoe Pound*** and other proponents and scholars of sociological school of law had agreed that law as a social instrument is apparently enacted to serve as social engineer, satisfying those interests that are good and supportive of the whole society. Upon critical assessment of the concept of sociological functions of law in the society and juxtaposing it with the topic of this discourse, it becomes evident how wide the gap of the sociological functions of the law in Nigeria is. Women in bondage in a section of Nigeria where Sharia law (which is realistically of religious perspective) holds sway depicts apparent weakness of rule of law in controlling and enforcing results of repugnancy test in Nigerian legal system.

CONCEPTUAL CLARIFICATION

Conflict of law

Conflict of laws is indeed a complex legal phenomenon that tends to determine which law a jurisdiction can apply to a case. It is also called private international law. Conflict of laws is basically a combination of rules, laws, precept, decrees a jurisdiction may apply to a

[11] *Von Ihering (1924) Law as 9 means to an end. Cited in Jurisprudence by L.B. Infra P. 140*
[12] *Ibid*

[13] *Pound, R (1959) Jurisprudence. Vol 111 .P. 304*

case, transaction, or other circumstances that have connections to more than one jurisdiction[14].

In the context of this discourse, our attention is basically on the conflict between s*haria* law and rule of law in the Nigeria legal system and how it affects rights of women, especially in the North. While the *sharia* law is a product of or drawn from the religious belief of a section of the country (the North), rule of law is drawn basically from the collective agreement by the peoples of Nigeria. The fundamentality of rule of law over Islamic law cannot be questioned, because rule of law constitutes an Act of Parliament of a state, usually enacted by a well constituted, well represented house. The House is apparently made up of elected representatives of various constituencies, who usually congregate, observing legislative procedure of passage of bill into law, from introduction of the bill to president's or Chief executive's assent. The aforementioned democratic-cum-legal process of arriving at rule of law is a clear depiction of the transparency of rule of law, contrary to the lopsided, non- justicesable, non-justifiable, and religiously organized rules called Islamic law, dominated by a bastion of male *chauvinism*. Rule of law or constitution, therefore means in a concrete explanation, a document in which the most important laws of the land are authoritatively ordained[15]. Conflict of law in Nigeria, basically between the rule of law and *sharia* law has produced pejorative coloration to the Nigeria legal system. The constitution ought to take precedent, and thus cause to be expunged, any rules, law, precepts, religiously or secularly inclined that cause the citizen of Nigeria, irrespective of the location (North or South) any pain or suffering alien to the constitution of the Federal Republic Nigeria. The existing conflict of law in the Nigeria legal system basically affects women on matters a fair hearing and social freedom, whose foundation is on religion, contrary to section 10 of the constitution of the Federal Republic of Nigeria 1999 (as amended), which provides that "the government of the Federation or of a state shall not adopt any religion as a state religion[16]. Past and subsisting constitutions of federal Republic of Nigeria have always recognized, provided and enshrined fundamental human rights as one of the pillars of the rule of law, thus the provision …Citizens should be protected and safeguarded from any degrading treatments and free from discrimination including that on the basis of sex or religion[17].

At this juncture, there is compelling need to observe the apparent contradiction in the legal system. Observing the Islamic Penal Codes, enacted after the 1999 constitution in almost all the northern states and adoption of clearly undemocratic and illegal methods of enforcement, emasculation of freedom of women and the mode of punishment explicitly

[14] *Cheredry Chenko, O. (2007) fundamental Rights, contract law and protection of the weaker party. Utrecht, Netherlands|: Utrecht University Institute for Legal studies hdl: 1874/20945*
[15] *Hood, O.P. Constitutional and Administrative Law (7th edition)*
[16] *Section 10 of the 1999 constitution of the Federal Republic of Nigeria (as amended)*
[17] *Section 3(1) of the 1999 constitution (as amended)*

points to the case of ***res ipsa loquitur*** targeting women's freedom. Laws, and bye laws in the northern states of Nigeria ban un-Islamic dressing by female Muslims, thus imposing ***Hijab;*** ban community female passengers by motorcycles; ban gender mixed sitting arrangement on public commercial transportation. The targeting of women's rights by religion-born laws in a section a Nigeria is a fundamental affront to democracy, rule of law and the judiciary.

***Sharia* law**

Literally *sharia* means "the path leading to the watering place". However, it is pertinent to note that the terms *Sharia* and Islamic laws are construed as synonymous, thus interchangeably used and applied in this project. *Sharia* and Islamic laws are same in meaning, application and remain derivatives of Muslim religion. *Sharia* Law is a legal system usually practiced by countries whose main religion is religion of Islam. The said law is predominantly part of the Islamic red book called the ***Quran. Quran***, a fundamental decider of application of *sharia* law, regulates the behaviour of the citizens. *Sharia* laws are codes and standards for living in which all Muslims should adhere or strictly observe, including prayers, fasting and donation to the poor. *Sharia* law has four main sources and they include; the Holy Book the ***Quran***, the ***Sunnah*** (the traditions or known practices of the prophet ***Muhammad***), ***Ijna'*** (Consensus), and ***Qiyas*** (analogy)[18] (BBC, 2022). In the Islamic legal system, the jurists issue guidance and rulings. Guidance considered as a formal legal ruling in Islamic legal system is called a *fatwa*. In *Sharia* law states, offences are divided into to two categories. They include –***hadd*** offences. ***Hadd*** offences are those considered as serious crimes with identified or set penalties. The second category is called ***tazir*** crimes. The punishment for ***tazir*** crimes are usually at the discretion of the judge(s)[19]. In many Islamic countries, the *sharia* law provides that punishment for ***hadd*** offences like theft is amputation of offender's or the criminal's hand[20].

Law

The term "law" is a multi-dimensional phenomenon but its function and purpose in the society appears uniform. In the ***pre-hobbesian*** society, human or social existence was not regulated by the forces of organized law. Thus, life in state of nature according to ***Thomas Hobbes*** was bleakly described as brutish, nasty, short and solitary. It was a constant pit of war, survival and death. The views of the liberal scholars have it that law is a reconciling agent, contrary to that of the leftists who vehemently opine that it is to serve the interest of the haves at the expense of the haves-not. However, for the purpose of this paper, law is construed as instrument for social control, and mere requisite for justice in the society.

The most lucid way of presenting theoretical explication of law is by asking and answering the questions that bother on the functions or importance of law in the society. There is no

[18] *BBC (2022) Listen: Islamic law and its origins: In our Time, BBC Radio 4*
[19] *Ibid*
[20] *Ibid*

alternative to law as far as social justice is concerned. The major legal deficiency of ***pre-Hobbesian*** society was society order. The existential lacuna created by lack of law and order in the referred society was filled by the introduction of social contract. This reversed the hitherto dark and hopeless description of life in a stateless and lawless society. This presents law as regulator of man and his activities in the society[21].

On the part of giving exact conceptualization or definition of law, Drewery sarcastically but factually opined as follows;

> *Let it be said straight away that if anyone were to state categorically that he knew the precise answer to the question "what is law", he would deserve to be regarded either as a fool or as the greatest philosopher living[22].*

In his contribution to the concept of law, ***Thomas Aquinas*** was inclined to recognizing divine source as the fundamental origin of law for the society, thus he described law as a dictate of human reason guided by God. His conviction of concept of law compelled the submission that:
Law is a rule or measure of action in virtue of which one is led to perform certain actions and restrained from the performance of others. Law is nothing else than a rational ordering of things whoever is charged with the case of the community[23].

The prohibitory function or relevance of law accounts for uncommon homeostasis in human community. It also dictates the type and level of interaction between citizens and the state, that is, responsibilities of the state to the citizens and those of the citizens to the state, such as citizens' tax obligation to the state, and state's obligation of diametric protection and provision of infrastructure for the citizens of the state.

Law, according to ***Nwebo;***
Enforces both moral and religious values particularly in areas where such values or norms have been aborted by statute by the process of legislation as can be seen in the laws of forbidding the offences of homicide, stealing, abortion, bribery and corruption[24].

According to Oxford Dictionary, law is the "System of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce

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[21]Namani (1990) Law and layer society, in the lawyers Journal Owerri. friends law publisher Vol. 1 no 2 P9 6.
[22] Drewery, 9 (1981) Political Realities, Law, Justice and Politics 2nd edition longman
[23] Aquinas T. (nd) Summa Theological, 3 – 7. In introduction to Jurisprudence Lord Lloyd . Pp 109-114.
[24] Nwebo, O.E. (1985) Law and Social Justice in a developing society. A critical Approach Owerri. International Universities Press.

by the imposition of penalties"[25] law is usually a product of Acts of the Parliament, and other acceptable rules, norms and traditions which have shaped the culture of the people for a very long period of time.

Rule of Law

When rule of law is mentioned, attention turns to the constitution, democracy and independence of the judiciary. Rule of law is akin to constitutionalism. This is a situation where the law of the land is allowed to reign supreme, in every facets of the peoples' social existence, no matter whose ox is gored. It entails unbiased administration of justice system of a people. ***Ward Coke*** was the foremost proponent of Rule of Law in this famous expression that "King must be under God and law to ensure that executive pretensions are subject to superior law". However, it was popularized by ***A.V. Dicey*** in 1885, in his work "Introduction to the study of the law of the constitution"[26]. The pertinent question is, what does rule of Law ensure or protect, specifically? In most cases, however, rule of law protects and ensures the implementation and preservation of the content of the society's supreme document or the constitution. Furthermore, and most importantly, the content of the constitution is those fundamentals that preserve law and order, ensure peace and stability, encourage equality and equity in the polity, and maintenance of the legal-cum-democratic sustainability of the political system. At this juncture, it is very apposite to outline and discuss some of the important tenets of democracy expected to be protected by functional rule of law for smooth, peaceful and prosperous political (democratic) system. Below are some of the tenets of democracy;

1. Separation of Power
2. Periodic Election
3. Political Equality / Equality before the Law
4. Majority Rule/ Minority Rights
5. Freedom of the Press[27]

Separation of Power

This is an important tenet of democracy, which can only be fully guaranteed in a political system where rule of law towers. The most important ***raison d'état*** for introduction of the doctrine is to forestall flagrant abuse of power in the state. If the three arms of government are not separated and entrusted in different government agencies, such legal maxim as **"*Nemo judex in causa sua*"** will definitely be tampered with. Separation of Power was first propounded by ***Baron Montesquieu***, a French scholar. It was published in his work

[25] *Oxford Dictionary: Definitions from oxford languages*

[26] *Appadorai, A.A. (1974). The substance of politics madras Oxford University Press.*

[27] *Mbahu, I.O. (2000) Political theory: fundamental Assumptions of Government and Politics. Owerri Achugu Publication*

titled ***"Espirit de Louis*** (meaning the spirit of the law) in 1747[28] **.** The doctrine of separation of Power emphasizes that the executive, legislative and judicial arms in the state must be separated and allowed to be handled or controlled by different authorities in the state to avoid abuse of power and attendant "Power corrupts, absolute power corrupts absolutely" (***Lord Denning***)

Periodic Election

First of all, the practice of democracy cannot be without successful periodic election, and successful periodic election cannot be achieved without efficaciously functional rule of law in the polity. The forces of rule of law are capable of pointing at the red line for every political actor in the polity to see and act accordingly. This further explains that such laws like Electoral Acts must be strictly observed in any step taken about periodic election in a particular political system. Observation of the rule of law is fundamental to every facet of success a state can achieve, but when the opposite is the case, the state and citizens are likely to suffer. For example, after attainment of self-rule in 1960, the Rule of Law prescribed periodic election as the only means of charge of power, given the fact that democracy was the system of government adopted and recognized by the constitution.

The situation turned sour when the military struck in a coup, and the constitution (Rule of law) was abrogated, and for almost a period of twenty nine years, successive military coup became the means of change of power in Nigeria. Thus, within the period stipulated everything about rule of law and democracy was eroded.

Political Equality

In every democratic system, guided by Rule of Law, every citizen is considered equal in the lens of Law, and thus should be treated. No citizen claims superiority over others in the government of a state whose administration is dictated by the Rule of Law. For example the constitution approves male and female adult suffrage, approves equal opportunity for male and female in the public service, either elective or appointive position. It also approves choice of social life like political affiliation, choice of religion and other associations. Besides, the constitution offers equal opportunity to citizens who aspire for political office. There is no preference of aspirants by the law. The rule of law does not lower the qualification required for a particular aspirant against other as a favour. All aspirants usually, as prescribed by law, pass through same qualification screening without preferential treatment.

Majority Rules while the Minority Watchdogs

Rule of law in a democratic state created two important and inevitable divides. They include the majority and minority. The judicious functionality of the two brings prosperity to the state and citizens. The Rule of Law usually upholds that at the end of general election

[28] *Ibid*

in a state, there must be winners and losers. The majority will win while the minority will lose. Majority will form the government to control machinery of government while the minority will form strong watchdog to the ruling party. Both play important role to ensure good governance in the state. While the majority which formed government of the day is constitutionally charged to ensure constitutionalism, the minority forms the watchdog to constructively criticize the activities of government. The constructive criticism of the opposition usually helps the government to be alive to the provisions the law *vis-à-vis* good governance.

Freedom of the Press

The legal system of every democratic state makes press freedom a paramount objective. No country can claim to be practicing democracy and rule of law unless the press is constitutionally allowed to carry out free, credible and constructive reportage of events in the state. The press is the disseminator of the activities of government, and as such should be accorded the legal right and protection to constructively criticize the government of the day if it adopts policies that negate the doctrine of rule of law, democratic government and good governance. The services of the fourth estate of the realm that operates within the ambit of rule of law cannot be over-emphasized.

In addition to the 1948 United Nations Universal Declaration of Human Rights, section 33 of the constitution of the Federal Republic of Nigeria 1999 constitution of Nigeria[29] (as amended) provided the following fundamental entitlements for citizens of Nigeria.

Right to Life

Simply put, this means that nobody has the right to deprive fellow human right to live or exist. Anybody that attempts or perpetrates such act will be held to account by the law enforcement agents and if found guilty by court of competent jurisdiction, will be punished accordingly. However, the rule of law provided for limitation to this fundamental right. This occurs in the event a citizen is found guilty of heinous crime that by law attracts capital punishment, the nature of the crime by law takes away or nullifies the culprit's right to life.

Right to Dignity of Human Person

Every human being, poor or rich, male or female, old or young, educated or illiterate has right to enjoy dignified treatment. The rule of law abhors such in human treatment of persons as torture, derogatory statement, and other forms of degrading statement. The United Nations Organization and International legal institutions vehemently frown at torture as an alternative strategy to elicit confessional statements from suspects.

[29] *Section 33 of the constitution of the Federal Republic of Nigeria, 1999 (as amended)*

Right to Personal Liberty

Online English Dictionary defined civil liberty as "fundamental individual right protected by law and expressed as immunity from unwarranted government interference".
The rule of law or constitution that provided for individual's right to personal liberty also provides that such liberty may be withdrawn in an event the individual will be required to appear in a legally approved place to answer for charges preferred against him.

Freedom of Expression

The Rule of law in a democratic state permits citizens right to self expression without unlawful interference from individuals or constituted authority. However, right to these rights is guided by the law; that is to say, it must be exercised within the dictates of the establishing Acts of Parliament. The holder of the right must not issue any malicious statement against others or constituted authority; must not divulge government official secret privy to him, must not falsely accuse anybody with intension to cause harm, or customizing government with intension to discredit it and thus cause sedition. Any of the above-enumerated acts is capable of calling the law to revoke the freedom of expression.

Women and the chronicles of sharia law in Nigeria

***Sharia* law in Nigeria**

It is important to note here, that *sharia* law and Islamic Law will be used and applied interchangeably. *Shaira* or Islamic Law in Nigeria is as old as the existence of Islamism in Nigeria. This is true because since Islamic or *sharia* law guides the practice of Islamic religion, it logically follows that emergence of Islamic religion in Nigeria heralds the introduction and observation of *sharia* law in Nigeria.

The practice of *Sharia* Law in Nigeria is most disadvantageous to the course of women. According to *Ikenga*, the Islamic Law, through the Koran revealed the general tradition imposed on all testamentary evidence in Islam that, the evidence of a woman is half the evidence value of one man.[30] Furthermore, the Islamic Koran stated that when you contract a debt for a fixed period, write it down and get two witnesses out of your men and if there are none available, then a man and a woman, so that if one of them errs, the other can reminds her[31].

These traditions and infractions on the right of women by *Sharia* practices are in direct opposition with the constitution of Nigeria. For example, the aforestated odds against women are inconsistent with the provision of *section 42* of the Constitution of Federal Republic of Nigeria which stated that;

[30] Ikenga, O.K.A. *A critique of certain aspect to of Islamic personal law in Nigeria:* Re-examining the jurisprudence of women's right 1995, p.g. 10
[31] *Koran* 2: 282

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 government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject or (b) be allowed 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 citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions[32].

In furtherance of the protection of rights of citizens of Nigeria, *section 17(1)* and (2) of the constitution of Federal Republic of Nigeria provided inter alia;

1. The state social order is founded on ideals of freedom, equality and justice.
2. (a) every citizen shall have equality of rights, obligations and opportunities before the law;

(b) The sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;

(c) Governmental actions shall be humane;

(d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and

(e) The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained[33].

The legal affront the *Sharia* Law created against the constitution of Nigeria is largely yet to be addressed. This unfortunate scenario has for long, subjected many citizens of northern states, especially the women folk to series of rights violations. In most many northern states of Nigeria, women are forced by a certain Islamic Law to avoid putting or any un-Islamic dresses and also banned from gender mix sitting on public or commercial transport[34]. Chronologically, the effective re-introduction and full practice of *Shaira* Law in Nigeria (Northern Nigeria) took place on October 27, 1999, in *Gusau*, the Capital of *Zamfara* State, when *Ahmed Sani Yerima* was the governor and Chief executive of *Zamfara* State. It was revealed that prior to the aforementioned, the practice of *Sharia* Law in Northern Nigeria was visibly limited to civil matters, without any legal coverage for criminal offences or matters[35].

Three years later, that is by the end of 2001, not less than eleven (11) more state government from the Northern Nigeria, and some local government areas teamed up with *Zamfara* State to enact wide-ranging legislation to make their jurisdictions or areas of

[32] Constitution of Federal Republic of Nigeria (As amended)
[33] 1999 constitution of Republic of Nigeria (As amended)
[34] 1999 constitution of Republic of Nigeria (As amended)
[35] Zamfara 1999: Zamfara State Sharia Court Law no 5 of 1999 – Gazette, No 1, vol 15.

control clearly and understandably *Sharia* complaint. This piece of legislation unambiguously incorporated both civil and criminal matters[36]. The new entrant states include; *Bauchi; Borno; Gombe; Jigawa; Kaduna; Kano; Katsina; Kebbi; Niger; Sokoto*; and *Yobe*[37].

It was the collective resolve of the *Sharia* states that;
all Sharia states reinstated Islamic Criminal Law in their jurisdictions. All Sharia States also enacted Sharia Courts of Laws, establishing new inferior Sharia Courts, with original jurisdiction to apply the full range of Islamic Law, Civil and Criminal, to Muslims. Furthermore, a wide range of other legislation was enacted aimed at particular social vices and un-Islamic behaviour, such as the consumption of alcohol, gambling, prostitution, unedifying media, excessive mixing together or unrelated males and females[38].

In a formidable attempt to strengthen the introduction, practice and sustainability of *Sharia* law in the Northern Nigeria, certain steps were taken by the concerned State governments: These steps include; establishment of *Sharia* Commissions and councils of ***Ulma*** which endowed with both advisory and executive functions. The concerned also set up ***Zakat*** and the Endowment Boards and Committees functionally responsible for the collection and distribution of *Zakat* and administration *wakfs*. Besides, efforts were made to set up the *hisbah*, that is, Islamic police. The function of the *hisbah is* to ensure strict implementation of *Sharia* laws so that adherents' compliance to the provisions of *Sharia* Law will be effective[39].

The enactment and subsequent practice of *Sharia* law in Northern Nigeria has put to question its constitutionality *vis-a-vis* the existence of Nigerian constitution. Before now, *Sharia* law was treated as private and purely religions law, not overlapping to exercising jurisdiction on criminal matters. The most contentious aspect is that Nigeria recognizes *Sharia* Court of Appeal as Federal Court of Appeal in the Nigeria Legal System[40]. The concern of many is that *ab initio, Sharia* law was categorized as customary law in Nigeria, and that its new states as *Sharia* Court of Appeals, giving it the legal impetus to interpret and review cases involving *Shaira* law, could as well overlap in interpreting and reviewing the common and customary laws of the other regions of Nigeria. The new state of *Sharia* law which came on board as a result of the judicial pronouncement made in 1998, in the case of Alkamawa v Bello, has raised serious concern and may questions the secularity of

[36] Kano State Sharia Law on woman in Public transportation, 2005
[37] Oxford Department of International Development, Queen Elizabeth House. https://www.geh.ox.ac.uk/content /sharia-implementation-northern-nigeria-after-15-years accessed on May 10, 2022
[38] Ibid
[39] *Ibid*
[40] The implantation of the Sharia in secular Nigeria has often been controversial:

Nigerian constitution. In view of the above-mentioned concerns, the distinctiveness and universality of *Sharia* in Nigeria appears welcomed[41].

Introduction of *Sharia* law in the states of Northern Nigeria is not without perennial consequences. Riots that led to the death of many and loss of property worth millions of naira have been experienced across the Northern States, particularly between the *Muslim* majority and non Muslim or Christian minority in the region. In October 2001, more than one hundred (100) people were killed in a religious riot that erupted in Kano as a result of implementation of *Sharia* law in the State[42]. There are two important institutions set up by the *Sharia* practicing States in Nigeria for seamless administration of *sharia* legal system. They include the *Alkalis or Sharia* judges and the *Hisbah or the Sharia* police. The two components are functionally complementary. The *Alkalis*, who are learned both in Islamic and secular laws, are charged with pronouncement of verdicts on offenders of the *Sharia* law. Sentences by *Alkalis* in *Sharia* courts could be floggings; amputations and death penalty. Stealing, such as stealing of goats attracts amputation. Same penalty applies to stealing of groceries in the market place[43].

The reintroduction of *Sharia* law in Nigeria (Northern) in 1999 has witnessed many penalties such as amputation and death sentences. In 2002, a man accused of killing a woman and her two children was sentenced to death by hanging, and the death sentence was executed. In 2016, *Abdulazeeze Inyass*, was sentenced to death by the *Sharia* Court for blaspheming against Islam. However, there is stay of execution because the governor of the State (Kano) has not *assented* to the sentence[44]. In a similar vein, *Yahaya Sharif-Aminu*, a musician who plies his trade in the Northwest State of Kano, was on the account of being found guilty of blaspheming against Prophet Muhammad, sentenced to death by hanging by a *Sharia* Court[45].

The *Hisbah* plays fundamental roles in the enforcement of Sharia law in affected environment. It is like the police that operate in the secular environment. In the Northern States of Nigeria, *hisbah and Sharia* implementation committee are charged with the onerous task of ensuring that the public strictly observe and keep to the provisions of the *Sharia* law in their daily activities. The interpretation of the assignment *to hisbah* is that it

[41] Alkamawa V. Bellow and others: case considers the form and states of Islamic law in Northern Nigeria. https://islamiclawblog/2020/10/13/alkamawa-v-bello-and-another-case-considers-the-form-and-states-of-Islamic-law-in-northern-nigeria/

[42] *Ibid*-Dozens die in Nigeria riots. https://www.theguardian.com/world/2001/oct/15/

[43] Premium Times, January 5, 2022. Kano Court Sentences man to death for blasphemy https//www.premiumtimes ng.com/kano-court-sentency-man-to-death-for-blasphemy – access on June 15, 2022

[44] *ibid*

[45] The enforcement of Sharia and the role of the hisbah: https://www.hrw.org/report/2004/nigeria0904/8.htm - access on June 5, 2022

started arrest and prosecute any person or group of persons found to be directly or indirectly acting or speaking foul of the provisions of *Shaira* Law.

Succinctly put, the Arabic term *hisbah* means;
an act which is performed for the common good, or with the intention of seeking a reward from God. The concept of hisbah is Islam originals from a set of quranic verses and Hadith. It is an obligation placed on every Muslim to call for what is good or right and to prevent or denounce what is bad or wrong. The Qurán States: let there arise from you a group calling to all that is good, enjoining what is right and forbidding what is wrong (The Qur'an 3:104)[46].

In the Nigerian context, the *hisbah* is not the only *Sharia* law enforcement agent. Such function of *hisbah* as destruction of liquor in Kano State is being performed in Niger State by similar agency with different nomenclature. The government of Niger State, on 27th April, 2000, set up a Liquor Board. The Chairman of Liquor Board reiterated that its fundamental duty is to combat crime, and that since the consumption of liquor is the mother of all crimes, the board is left with the sacred task of permanently eradicating its consumption in the prohibited areas of Niger covering nine towns and making sure dealers obtain the mandatory liquor license to operate the sale of alcohol in the non-prohibited areas[47]. Towards the end of July 2003, precisely July 28, 2003, at a public gathering in Gusau, Zamfara State capital, the Governor of the State, Muhammad Yerima, as touching the role of new *hisbah* commission, stated *inter alia*,

The role of new hisbah commission includes, among others, monitoring the implementation and application of laws relating to Sharia; ensuring proper compliance with the teaching of Sharia by workers in the private and public sectors; monitoring the daily proceeding of Sharia courts to ensure compliance with the Sharia penal code and code of criminal procedure reporting on all actions likely to tamper with the proper dispensation of justice; keeping a record of all people in prison with pending hudud cases; taking every measure to sanitize society of all social vices and whatever vice or crime is prohibited by Sharia; taking every measure to ensure uniformity with the teachings of Sharia by the general public in matters of worship, dress code, and social and business interactions and relationships; and enlightening the general public on the Sharia system and its application[48].

[46] Human Rights Watch Interview, Mima, August 30, 2003 https://www.hrw.org/report/2004/nigeria0904/8.htm accessed on September, 2021.
[47] *Ibid*-https://dailypost.ng/2018/06/06/niger-government-liguo-operators-prostitutes-state/acces on June1,2022
[48] *Ibid*

Development of Islamic Law in Nigeria

History and development of Islamic Law in Nigeria appear a little *chequered*. Islam was first introduced in Nigeria as early as in the 9th century during the reign of *Mai Idris Aluoma* in the Bornu Empire[49]. History has it that by 11th century, the nucleus of the great Islamic state was formed. In the 16th century, *Bornu Empire* had already reached the zenith of Islamic civilization. Furthermore, the status of Islamic civilization achieved by state necessitated the institutionalization of certain structure that would help the Empire to function smoothly. It composed of the *Majlis*, meaning the State Council and the *Kogunawa*, meaning the Executive body, which further comprised various departments like trade, police and protocol. There was the *Gonis* which means the jurists, from where judges, scribes and ambassadors of the state were appointed[50].

Islam arrived Southern Nigeria at about 14th century during the reign of *Mansa KanKan Musa* of the Mali Empire. Progressively, according to *Al-Aluri*, Oyo-Ile became the location in which the first *Mosque* was built in AD 1550, though there was no Yoruba Muslim. History has it that the essence of the Mosque was to serve the spiritual needs of foreign Muslims residing in Oyo[51].

Codification of Islamic Law in Nigeria

Codification of Law was reported to have started in the beginning of 1760s, pointing out that the first or early civil codes was made during the reign of king of Babylonia which was alleged to have been predicated on the doctrine of retaliation. Specifically, history has it that the first codification of law is *Lex Duodocim Tabularum*, which was one of the sets of regulations in the Roman Empire. This was followed by body of civil law which tremendously aided law makers in their legislative functions[52]. Besides, another important code emanated from the Roman Empire, called *Justinian's* regulations. The regulation was brought or introduced by *Romulus and Remus*. One of the significant or striking features of the Justinian's regulation was its comprehensive nature thus, making its understanding by the populace very seamless. Furthermore, the code included ancient laws of Rome regulations which actually helped court judges for presiding of cases and law students for update[53]. What is codification of Law? Codification of Islamic law is the process by which the various legal rulings of the Sharia (*al-ahkam al-sharah*) of a specific subject matter (such as property, torts, family law, etc) that are collected and related in a clear and concise manner. It is to form a legal code that has full effect within the range of political jurisdiction[54]. Codification of law is therefore, absolutely the institutionalization of the

[49] Alkali M.N. *The concept of Islamic Government in Borno Nigeria* (1977).
[50] *Ibid – P.93*
[51] *Ibid P.93*
[52] Islam in Nigeria. Retrived: htts://en.wikipedia.org/wikiislam_in_Nigeria
[53] Sebghatullah Qazi Zada, and Ahmad Ibrahim Kulli Yyah (2016). Codification of Islamic Law in the Muslim World: Trends and Practices. J. Appl Environ. Biol.Sci, 6(12) 160-171, 2016
[54] *Ibid P. 160*

legal system of a state, and consequently, the smooth delivery of justice through an empirical judicial procedure.

The codification of Islamic Law in Nigeria started in the Northern part of the country. It started with the eleven states that adapted *Shaira* Law. Though there may be application differentiation among the *Sharia* States in the North, there are visible similarities in their penal codes. Effective codification of *Sharia* in the Northern States started in 1999, with *Zamfara* government under the executive leadership of *Ahmed Sani Yerima.* However, in the year 2000, the *Jigawa* State government provided the following *Sharia* Penal Code;
Sections 126-127 Zina (fornication/adultery)
- Unmarried: 100 lashes and 1 year in prison
- Married: stoning to death (*rajm*)

Section 128 – 129 (Rape)
- Unmarried: 100 lashes and 1 year in prison
- Married: stoning to death (*rajm*)

Section 130 – 131 Sodomy (*Liwat*)
- Unmarried: 100 lashes and 1 year in prison
- Married: stoning to death (rajm)

Sections 132 – 133 Incest:
- Unmarried: 100 lashes and 1 year in prison
- Married: stoning to death (*rajm*)

Sections 134 – 135 Lesbianism (*Sihaq*):
- 50 lashes and up to 6months imprisonment

Sections 136 – 137 Bestiality (*wat al – Bahimah*)
- 50 lashes and 6months imprisonment

Sections 138 Gross Indecency:
- 40 lashes, 1 year imprisonment and possibility of a fine

Section 144 – 145 Theft (*Sarigh*)
- First four offences: amputation of right hand, left foot, left hand, right foot[55]

Conflict between sharia law and rule of law in Nigeria

The fundamental distinctions, disparities and incompatibilities between *sharia* (purely Islamic, religious law) and the rule of law (constitutionalism) are conspicuously glaring. *Sharia* law is sectional and religion-based, while the constitution is a compendium containing the rules and regulations that define the existence of a sovereign state. The conflict between the two lies in the unexplained reasons why a section of the Nigeria federation could be practicing a religion-based law, contrary to most of the fundamental human rights provided by the constitution of the federation. This scenario contradicts the content and facts of the *preamble* to the Nigerian constitution, 1999, as amended, which

[55] Nigeria: Penalty under zamfara state sharia law for a man who has pre marital sex. Refworld.org/docid/3df4be7e10.html accessed September, 2021.

clearly spelt out freedom, impliedly inclusive of those whose violation is the fundamental case of conflict.[56]

Conflict between *sharia* law and rule of law on fair-hearing

The germaneness of fair-hearing in legal proceeding can neither be neglected nor overemphasized. It is the basic tenet of liberal democracy founded on sound democratic system. *Section 36(1)* of the constitution of Federal Republic of Nigeria, 1999, as amended, states *inter alia*;

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair-hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[57]

Furthermore, *Article 6* of European Convention on Human Rights emphasized on right to a fair trial[58]. According to United Nations Counter Terrorism Implementation Task Force, right to fair trial must observe the due process consistent with the provisions of United Nations Human Right Commission (UNHRC)[59]

> *A judicial proceeding that is conducted in such a manner as to conform to fundamental concepts of justice and equity. During a fair hearing, authority is exercised according to the due process of law. Fair hearing means that an individual will have an opportunity to present evidence to support his or her case and to discover what evidence exists against him or her* [60].

At this juncture, fair-hearing could be defined as observation of fundamental human rights in the trial of any defendant by court of competent jurisdiction, where such maxims as *audi alteram partem and nemo judex in causa sua* are applied.

Principles or attributes of fair hearing

In the case of ***Sani vs. State***,[61] certain fundamental criteria of fair hearing were spelt out. They include the following;

[56] Permeable to the Nigeria constitution 1999, as amend. Language Alhub.com/permeable June 26, 2022
[57] Constitution of the Federal Republic of Nigeria, 1999, as amended. Pp. 41-42
[58] *European convention on Human Rights* (1950). https:www.equalityhumna-rights.com.june 26, 2022
[59] Basic Human Rights Reference Amid: Right to a fair trial and due process in the context of counting terrorism. bCTIFF Publication Series, October 2014. http:/www.un.org/terrorism/ctitf/index.shtml. June 30, 2022.
[60] Definition of fair-hearing. https://legal –dictionary.thefreedictionary.com June 30,2022.
[61] Principles of fair-hearing. Thenigerialawyer.com/the-principles-of-fair-hearing. July, 1 2022

i. *The courts shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case;*
ii. *That the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned.*
iii. *That the proceedings shall be heard in public and all concerned shall have access to and to be informed of such a place of public hearing;*
iv. *That having regard to all the circumstances, in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done"*

The position of the Constitution of Federal Republic of Nigeria, 1999, (as amended) on issue of fair-hearing for its citizens is never in doubt. However, the complex problem facing Nigeria legal system is the religion-based legal system in the Northern parts of Nigeria which infracts on the rights of women. At least the preamble of 1999 constitution of Federal Republic of Nigeria openly and manifestly informed the public of their rights to fair – hearing in all matters before the courts.

Contrary to rights of fair hearing to the citizens and residents in Nigeria ,*Tawa Bello's* rights to fair hearing was emphatically and manifestly denied. According to the reports of civil liberties organization, 18- year old nursing *Tawa Bello* was forced to receive ten strokes of cane upon her conviction by a Sharia court situated *in Quassau*, the capital of *Zamfara* state, for wondering and prostitution. The fundamental breach is that she was not allowed to be heard, that is for the court to hear her own side of the matter, and no form of legal aid was given to her for legal representation, thereby obstructing the enforceability of important legal maxims as *audi-alteram parten and nemo jude in causa sua*[62] .The conflict between the rule of law (Nigeria constitution) and Sharia law in the above-statement is manifest. It is manifest in the sense that the constitution of Federal Republic of Nigeria, 1999, as amended, provided for right of fair-hearing to the young woman[63]. This right was violated by the application of sharia law where she was convicted without being heard or being offered legal representation.

Another despicable act of violation of right to fair hearing orchestrated by state actors administering *sharia law* was the storing to death of a 200 level student of *Shehu Shagari* College of Education, *Sokoto* on May 12 (Thursday), 2022. Ms. *Deborah Samuel* was lynched and burnt for allegedly committing blasphemy against Prophet Mohammed and Islamic religion.[64] Again the conflict here is absolutely glaring because in the face of rule of law, the alleged offence should be a civil one and if allowed to be handled with respect to the rule of law should not attract death to the accused. The extremism that *sharia* law symbolizes or represents at expense of rule of law in Nigeria, especially against women

[62] Oragbunam, Ikenga, K.E.A. Critique of certain aspects of Islamic Personal law in Nigeria. Re-examining the jurisprudence of woman's right. Pp.10.
[63] Section 36 of the constitution of federal section republic of Nigeria, 1999,
[64] Prosper Okediji (May 25, 2022) Deborah Samuel: A case of social injustice https:/ tribuneonline.com. June 30, 2022.

could not allow them to hear accused side of the story, hence her execution. This is another high level affront to the constitutionality of Nigeria's supreme document and democracy for which reason people ask, do we here two legal systems in the one and indivisible Nigeria?

Conflict between *sharia* law and rule of law on freedom of women

Freedom to citizens of a Republic is part of human rights provided by Acts of Parliament, natural justice, equity and good conscience. Thus, any form of negation, infraction or denial, either in part or whole, for any reason not within the ambit of law of the land should be considered a nullity by the courts. According to *Black's Law Dictionary*[65], freedom includes;

The state of being free, liberty, self-determination; absence of restraint, the opposite of slavery. The proves of acting in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

The aforestated definition of freedom has been in one way or another, at one time or another, violated in the practice and enforcement of *Sharia* law against women in the northern part of Nigeria. According to United States Commission on International Religious Freedom[66], several interviewees in a study conducted in Northern Nigeria maintained that;

Hisbah members were overly concerned with women's dress, perceived prostitution, and alleged lesbian acts or gatherings, and this has often caused unwanted mistreatment and infractions on the freedom of the female folk in the zone.

The unprecedented anti-rule of law mode of enforcing *sharia* law by *Hisbah* in *Zamfara, Kano* and other parts of northern Nigeria clearly poses huge infraction on the freedom of women.

Conflict between *sharia* law and rule of law on women's marriage

Marriage is an institution ordained by God. It is for every adult, though some may decline for personal reasons. Marriage is the only means for procreation ordained by God[67]. Though marriage is important to be contracted at some point in one's life, it must not be entered lightly or by minors. Legally, and commonsensically too, it is evident that one should attain a certain age, the age of reasoning and accountability before going into marriage. Age of accountability and reasoning differ from country to country. Some pegged it at eighteen (18) while others maintain twenty one (21) years. However, it is age

[65] The Law Dictionary: Free online legal dictionary featuring black's law dictionary, 2nd edition; https://thelandictionary.org. July 2, 2022.

[66] United States commission on international religious freedom USCIRF_Shariahla….._120919V3R.pdf. July 4, 2022

[67] King James Bible, Jeremiah chapter 29:6

eighteen (18) in Nigeria as provided by Nigeria's *constitution of* 1999[68]. *Part III of child Rights Acts of* 2003[69] unambiguously and manifestly stated that no person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is *null and void* and of no effect whatsoever. Furthermore, the Act maintained that no parent, guardian or any other person shall betroth a child to any person.

The reason the study is trying to establish the position of the law regarding the age a child is legally due to marry is to ask probing questions about numerous cases of under-age marriages to girls well below legally approved age by men, some of whom are old enough to be the fathers or grand fathers of the girls in question.

The issue of underage marriage, which is one of the ways a child's right to marriage is violated has assumed intractable dimension especially in the northern part of Nigeria where enforcement of *sharia* law holds sway. Child's Right Act could have been a momentous defender of the right of a child in Nigeria but for the non-unanimous and lack of domestication of the Act by the thirty six (36) states of the federation. Regrettably, however unsurprisingly, the states that have refused to domesticate Child Right Act of 2003 are from the northern part of the country, where *sharia* law is enforced. The states are-*Kebbi; Kano; Katsina, Sokoto; Jigawa; Zamfara; Bauchi; Yobe; Gombe; Borno, and Adamawa*[70]

Many questions could arise from the non-domestication of the child Right Act by these northern *sharia* states, nearly nineteen years (19) after its enactment. Such questions could be; is there a nexus between non-domestication of the Child Right Act and the manner child marriages are contracted in the *sharia* practicing states of northern Nigeria? Or could it be a straight message that *sharia* law permits child marriage, therefore there is no sense domesticating the Act?
In 2018, *Idrisu Ali*, from *Bauchi* State, one of the eleven northern states that refused to domesticate the Child Right Act of 2003, gave his twelve (12) year old daughter, *Fatima Ali* out to marry a sixty-five (65) years old man. The father of the child bride *Idrisu Ali*[71] stated;

> *"I was sad because he was too old. I wanted her to marry someone younger, say 55 or 50 because he could take care of her for a longer time before he dies. But he was a successful farmer in the village and he paid a good dowry".*

[68] Constitution of Federal Republic of Nigeria, as amended section 117(2) 1999
[69] Child's Right Act, 2003. Part III
[70] Child's Right Act Arrangement of Sections. http:sofnigeria.placing.orgaccessed on July 21, 2022
[71] Fatima, 12, husband 65- the dire story of child brides https://www.forbesafrica.con/fatima. July 21, 2022

According to Human Rights Watch[72] parents in *Kano* State, one of the *sharia*-legislated states that have refused domestication of Child Rights Act, plan marriages for girls without providing choices regarding when or the person to marry. Marriage in the *sharia*-legislated states is usually justified on religious (*Sharia*-Islam) and traditional grounds on attending puberty. The Human Rights Watch further stated that such *Sharia* practicing states allow child marriage to be enforced by unequal gender roles, where girls have little or no power to determine what should be done with their bodies. It could therefore be deduced from the aforementioned that one of the reasons the eleven core *sharia* states of the north which refused to domesticate Child Right Act is premised on their determination to control marital or conjugal destiny of female children in the s*haria*-legislated states of the north.

According to Wellbeing Foundation Africa[73], Senator *Ahmmed Yerima*, former governor of *Zamfara* state, and leading state in the non-domestication of Child Right Act reacted to *Yerima's* marriage to 13 years old girl. The foundation maintained *Yerima's* action contradicted the sprit and letters of the Child Rights Act. There is therefore apparent conflict between the rule of law and *sharia* law on women's marriage in Nigeria. The constitution of Nigeria, 1999, as amended and Child Rights Act 2003 have separately and unequivocally provided that any marriage contracted by persons below the approved age of 18 years shall be declared as *null*, and of no effect whatsoever.

Conflict between s*haria* law and rule of law on women's education and social life

Education, by whatever form is the right of every child, male or female, irrespective of location and religion. According to *Suraju Saheeed Badmus*[74] education is from the *Latin* word *"educare*" which simply means "to rear or bring up. Thus, education means to rear, to bring up a child to the state he or she could be profitable to self and the environment. Besides, according to World Bank *Encyclopedia*[75], education is the way in which people learn skill and gain knowledge and understanding about the world and about themselves. *Hannatu Hassaini Maina*[76] attested that women in the northern part of Nigeria especially in the urban areas have attained a certain level of formal education and that they are knowledgeable in the teaching of *Islamic* religion, through the study of *Quaran*.

[72] Nigeria: Child marriage violates girls' rights. https://ww.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights. july 3,

[73] Nigerian senator Rights who married girl of 13 accused of breaking child rights act. https://statis.gium.co.uk/images/favicom-32x32.ico.

[74] Suraju, Saheed Badmus. Utilizing Islamic Values in promoting girl-child education in Nigeria. Department of Islamic studies, college of humanities, Al-Hikmah University, Ilorin.

[75] The World Bank Encyclopedia (International). World Book Inc. London, 1992.

[76] Hannatu Hussairi Marina. The States of Hausa Muslim Women in Northern in Northern Nigeria today: a thee dimensional perspective. *International Journal* of Sciences: Basic and Applied Reasearch (JSBAR). http://gssrr.org/index.pho?journal=journalofbasicandapplied.

On the contrary, *Nazha*t and *Ahmed*[77] maintained girl child in most discriminated against since, and are not only denied politico-educational activities but also socio-economic activities. The table below depicts the educational gap between the north where *sharia* law reigns and South where rule of law holds sway.

zone	**Percentage**
South-south	75
South-East	85
South-West	89
North-East	20
North-East	25

Source: This Day Newspaper, 2005

The vividity of the *statistic* in the above table lends credence to the hypothesis, logic, and premise on apparent denial of education to girl child in the *sharia*-legislated states of northern Nigeria.

CONCLUSION

The study, appraisal of the conflict between *sharia* law and rule of law on rights of women in Nigeria was conducted to assess the extent of conflict situation occasioned by sharia-legislated states' violation of rights of women in disregard to the provisions of rule of law. The study established that *Sharia* law usually driven by *Islamic* religious rules, is in force in the northern part of Nigeria. Besides, the existence of *sharia* law in a *section* of Nigeria has created or established a conflict between it and general extant law (the constitution), hence disregarding the supremacy of the constitution of Federal Republic of Nigeria, 1999, as amended. The study concludes that enforcement of sharia law and non-domestication of Child Right Acts by the states of the north are unambiguous and clear affront to the supremacy of 1999 Nigerian constitution, as amended.

Recommendations

In view of the available data, the study recommends inter alia;

The 1999 constitution of Federal Republic of Nigeria, as amended, should be seen to supersede every law that exists in all parts of Nigeria.

Any law in Nigeria, other than the constitution should pass repugnancy test on the provisions of rule of law to reduce high incidence of conflict

Affirmative action in favour of feminist agitations should be vigorously encouraged in the *sharia*-legislated states to help close the wild gulf between male and female *vis-à-vis* societal importance.

[77] Nazhat Afza and Ahmed Khurshid. *The position of women in Islam* (A comparative study) Karashi Anis Ahmed Publisher. 1969

Necessary legislation should be put in place to practically see speedy domestication and implementation of child right act by all the 36 states of the federation, and federation capital territory.
Women should be allowed greater participation in both elective and appointive positions in Nigerian body politics.
There should be a legislation criminalizing all forms of mistreatment against women with heavy fines if found guilty. This will surely help to reduce or stop the evil.
Political as well as legal will should be deployed when necessary to ensure women are not mistreated on the basis of religion or whatsoever reason anywhere in Nigeria.
Adoption of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), will help to ameliorate violation of rights of women.