

The Entanglement of Sharī‘Ah Application in South-Western Nigeria

by

Makinde, Abdul-Fatah’Kola, Ph.D.

makindeabulfatah@yahoo.co.uk; akmakinde@oauife.edu.ng

Department of Religious Studies

Obafemi Awolowo University, Ile-Ife, Nigeria

Abstract

This essay attempts to unravel the problem by examining the status of Sharī‘ah in the Nigerian constitution and discussing the demands of Muslims of southwestern Nigeria for the establishment of Sharī‘ah Courts and Sharī‘ah Courts of Appeal at different periods. And after examining how the constitutional clause on Sharī‘ah creates difficulty for establishing Sharī‘ah courts to adjudicate matters of personal law in south-western Nigeria, concluding with recommendations made for solving the problem.

Keywords: Sharī‘ah; constitution; courts; personal law

Introduction

Prior to the colonial era, Sharī‘ah was applied in the north and part of Yorubaland otherwise known as southwestern Nigeria. As Sharī‘ah was applied in a few Yoruba towns such as Epe in Lagos State, Ede, Ikirun and Iwo in Osun State, historical evidence shows that the Obas (Monarchs) of these towns fully implemented Sharī‘ah to the letter.¹ The application of Sharī‘ah in some towns in Yorubaland was at its peak when the British colonialists arrived and introduced a colonial court system.² Nevertheless, Muslims in that part of the country demanded from the colonial masters the establishment of Sharī‘ah Courts to adjudicate their civil matters. Muslim groups petitioned the colonial administrators in 1894, 1923 and 1948, complaining about the application of laws repugnant to their faith, but these petitions did not receive any significant attention from the colonial administrators.³

In 1960, Nigeria won its independence and in 1963, the Republican Constitution tacitly recognised *Shari'ah*, in response to appeals from Muslim courts of northern Nigeria. It was anticipated that these developments would lead to the establishment of *Shari'ah* courts in southwestern Nigeria, but that did not happen. While northern Muslims have had the opportunity of applying their civil matters in the *Shari'ah* courts, their counterparts in the south have not. One wonders why, after more than fifty years of independence and constitutional autonomy, Muslims in southwestern Nigeria do not have access to courts where civil matters, particularly on matters of personal law, in accordance with the *Shari'ah* law are applied.

Outside of northern Nigeria, where it is easy for Muslims to adjudicate their personal law matters in the *Shari'ah* court, Muslims in Yorubaland find it difficult. Therefore, some Muslim groups in some states in the southwest have made private initiatives to give fellow Muslims access to adjudication according to *Shari'ah* through Independent *Shari'ah* Panels. Similar efforts have been made to provide private *Shari'ah* adjudication in some states of the southeast. Interestingly in 2008, these panels in Lagos State were given official recognition by a Lagos High Court Judge, Justice O. H. Oshodi, who ruled that Islamic Law is not the same as Customary Law; hence the Customary Court had no jurisdiction on the marriage matter brought before it. The ruling then recognised the Independent *Shari'ah* Panels in Lagos State and advised that one of the panels should have been approached on the case. (“The ruling of Hon. Justice O. H. Oshodi on November 6, 2008 with Suit No. ID/852M/207”). This ruling emphasised the need for *Shari'ah* courts for Muslims in southwestern Nigeria.

Rather than solving the problem of the Muslims in southwestern Nigeria, the constitution seems to have compounded it. Though the constitution allows the establishment of *Shari'ah* Courts and a *Shari'ah* Court of Appeal in any state, it attaches certain conditions and procedures that make such establishment difficult. This is where the entanglement lies. Therefore, we must consider the *Shari'ah* issue in southwestern Nigeria with a view to determining why the establishment of *Shari'ah* Courts and a *Shari'ah* Court of Appeal in any of the southwestern states has not been achieved.

History of *Shari'ah* in the Nigerian Constitutions

Nigerian constitutions since independence have made provisions for *Shari'ah*. Section 112 of the Independence Constitution of 1960 provided for appeals from decisions of the *Shari'ah* Court of Appeal to the Federal Supreme Court, ‘either as of right (“Section 112, 1) or with leave’ (Section 112, 2) of the Federal Supreme Court. The 1963 Republican Constitution upheld the same provision under Section 119 (1). This same provision was upheld by Sections 240, 241 and 242 of the 1979 Constitution, Section 261 of the 1989 Constitution, Decree No. 50 of 1991, Section 281 of the 1995 Draft Constitution, Decree No. 22 of 1997 and Decree No. 3 of 1999, as amended by Decree No. 4 of 1999.⁴

In 1956, prior to independence, a Muslim Court of Appeal, later known as the Sharī‘ah Court of Appeal was established for the northern region of Nigeria. The establishment was as a result of the northern Nigeria Sharī‘ah Court of Appeal Law that transformed the Muslim Court of Appeal to Sharī‘ah Court of Appeal of northern Nigeria. Both the Northern Nigeria Constitution of 1963 and the Republican Constitution of 1963 recognized the existence and jurisdiction of the *Sharī‘ah* Court of Appeal for the former northern region of Nigeria.⁵

Although neither the 1963 Constitution of the northern region of Nigeria or the Republican Constitution specifically established a Sharī‘ah Court of Appeal at the regional level, the draft constitution of 1976⁶ and the constitution of the Federal Republic of Nigeria of 1979 specifically established Sharī‘ah Courts of Appeal at the state and federal levels (Section 240). The 1976 draft constitution proposed the establishment of a Federal Sharī‘ah Court of Appeal, to consist of a Grand Mufti and a Deputy Grand Mufti, with no less than three Muftis, as may be prescribed by, or under an Act of, the National Assembly. The proposed function of this court was to hear appeals from the states’ Sharī‘ah Courts of Appeal. The Draft further proposes the establishment of a Sharī‘ah Court of Appeal for the State. According to the draft constitution, such a Sharī‘ah Court of Appeal of the State would consist of a Grand Qāḍī and such number of Qāḍīs as may be prescribed by the Legislature of each state.⁷

It was the proposal of the Constitution Drafting Committee that triggered the Sharī‘ah controversy in 1978.⁸ The question was: Should Sharī‘ah matters be retained in the constitution or removed? As a result of this controversy, the 1979 constitution included a conditional provision in section 240 sub-section (1), as follows: “There shall be for any state that requires it a Sharī‘ah Court of Appeal for that state.”

While the application of Sharī‘ah in the north on personal law matters was not contested, the situation was not the same in the south. Therefore, memoranda were submitted by various Islamic bodies to the Constitution Drafting Committee set up in 1976 by the Murtala Muhammad military administration, calling for the extension of the application of Sharī‘ah to newly created states of Oyo, Ogun and Ondo in the southwestern part of the country.⁹ The memoranda led to the recommendation of the Committee for the establishment of a Sharī‘ah Court of Appeal in all states of the federation. The recommendation never saw the light of the day.

Similarly, in 1988, on the floor of the Constituent Assembly convened by the Babangida military administration, much political heat was generated during the debate on the application of *Sharī‘ah* in the country leading to a threat on the unity of the fragile federation. As in 1978, wiser counsel prevailed and the controversial issue was resolved through a compromise: Any state that requires a Sharī‘ah Court of Appeal may establish one.¹⁰ The 1999 constitutional provisions with respect to *Sharī‘ah* are identical to those of the 1979 constitution. Therefore, the 1999 constitution retains the optional condition of establishing a Sharī‘ah Court of Appeal by any state that requires it. Section 275 of the 1999 constitution, on the establishment of the Sharī‘ah Court of Appeal of a state, reads as follows:

275 (1) There shall be for any state that requires it a Sharia Court of Appeal for that state.

- (2) The Sharia Court of Appeal of the state shall consist of:
- (a) a Grand Kadi of the Sharia Court of Appeal; and
 - (b) such number of Kadis of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the state.

Demands for *Sharī‘ah* by Muslims of Southwest

Despite the provisions for the establishment of Sharī‘ah Court of Appeal in the independence and post-independence Nigerian constitutions, Yoruba Muslims of the southwestern region were unable to have a Sharī‘ah Court of Appeal established in any of their states. Since independence in 1960 and down to the present, Yoruba Muslims have demanded from the governments of their states the establishment of Sharī‘ah Courts and Sharī‘ah Courts of Appeal.

Some Muslim individuals, scholars, leaders and associations have applied Sharī‘ah unofficially on matters relating to *nikāḥ* – marriage, *mīrāth* – inheritance and *ṭalāq* – divorce, either in their mosques, private homes or in their associations.¹¹ Other groups of Muslims continue to demand that the government establish Sharī‘ah Courts in Yorubaland.¹² For them, only Sharī‘ah can liberate man from servitude to any entity other than Allah. Sharī‘ah and Islam are inseparable and denying a Muslim the application of Sharī‘ah amounts to taking away Islam from him or her.¹³

In 1976, some Muslim groups mounted a campaign for the establishment of Sharī‘ah Courts in Yorubaland. One such group was the National Joint Muslim Organisations of Nigeria (NAJOMO), an umbrella body for Muslim organisations in the south. At a meeting held on Saturday, 7 February, 1976 at the Central Mosque, Ibadan, this body comprising accredited representatives of the Muslims from Ogun, Ondo (including the present Ekiti) and Oyo (including the present Osun) states, decided to address a prayer or petition to the Constitutional Conference for the establishment of Sharī‘ah Courts in the southern parts of Nigeria.¹⁴

The NAJOMO prayer was precipitated upon a committee set up by the then military government for constitutional review. NAJOMO decided to send a prayer to the Committee, impressing on it the views of all the Muslims of Ogun, Oyo and Ondo states. The thrust of their petition was two-fold. One, they wanted constitutional provisions that would enable any group of Muslims anywhere in Nigeria “to regulate their affairs by their religious law (the Sharī‘ah); two, they wanted “Sharī‘ah Courts established in Ogun, Oyo and Ondo states in such numbers as the Muslim population in the respective states warrants.”¹⁵

In February, 1976, a memorandum to the members of the Constituent Assembly on Sharī‘ah in the draft constitution was jointly signed by Mr. Dawud Olatokunbo Shittu Noibi and Dr. Sayed ’Tunde Malik of the Department of Arabic and Islamic Studies, University of Ibadan, Ibadan. The memorandum stated the need for the establishment of Sharī‘ah Courts in the southern part of the country emphasising that Sharī‘ah Courts were needed not only in the northern states but also in Yorubaland in the south. They asserted further:

The Muslims in the southern part of this country have not been indifferent to the issue of the Sharī‘ah. In fact they have been increasingly disturbed by apparent government disregard for the Sharī‘ah. And it is reassuring that they are now, far more than ever, conscious of their right to it and are determined to assert that right.¹⁶

In the 1980s, the late Chief M.K.O. Abiola made efforts on Sharī‘ah in Yorubaland. He advocated for Sharī‘ah with great zeal almost everywhere he went and he called for the establishment of Sharī‘ah Courts in all states of Yorubaland.¹⁷ In addition, the League of Imams and Alfas in Lagos, Ogun, Oyo and Ondo states, in May, 1984 called for the establishment of Sharī‘ah courts in Yorubaland.¹⁸

The Muslim Students Society of Nigeria (MSSN) also called on the Federal Military Government to establish Sharī‘ah Courts in the south. At a Muslim interdenominational one day seminar on *Sharī‘ah* held on 13 October, 1984, the Organisation of Muslim Unity (OMU), passed a resolution calling on all Muslim organizations to form a committee for the sole purpose of demanding Sharī‘ah in southern Nigeria. OMU also recommended the establishment of National Committee on Sharī‘ah.¹⁹

The OMU recommendation led to the formation of the National Committee on Sharī‘ah demanding for the establishment of Sharī‘ah courts in southern Nigeria. The Committee took up the responsibility of enlightening the Nigerian public at large on the Sharī‘ah as part of the Nigerian legal system. The Committee made use of a wide range of literature in its weekly writings in the National Concord on Sharī‘ah. The Committee also organised lectures, symposia and other open activities to bring Sharī‘ah to the doorsteps of Muslims. It also attempted to clear misconceptions about Sharī‘ah among non-Muslims.²⁰

The official launching of Sharī‘ah legal system by the Zamfara State Government on 27 October, 1999 opened another door for the establishment of Sharī‘ah courts by the Muslims in the southwest. The Gusau launching filled Muslims in all parts of Nigeria – the Yoruba southwest included – with new zeal to push Sharī‘ah implementation ahead in their own states to the extent allowed by local political realities.²¹

In Oyo State, for instance, the Muslim community mounted pressure on the state government through the State House of Assembly to establish Sharī‘ah courts. A bill was prepared on the issue and forwarded to the House of Assembly.²² In addition, the National Council of Muslim Youth Organizations (NACOMYO) Oyo State chapter, in conjunction with some Islamic bodies, introduced a plan to establish Sharī‘ah courts in some mosques in Ibadan. These courts would apply Sharī‘ah Law of personal status among Muslims on a private level, pending the official establishment of Sharī‘ah courts by the government. The failure of the government to yield to their demand led to the establishment of Oyo State Independent Sharī‘ah Arbitration Panel at Ibadan, the state capital on 1 May, 2002.²³

In Lagos State, the return to civil rule in 1999 brought about a change in the demand of Lagos Muslims.²⁴ The NACOMYO, Lagos State chapter, convened a meeting at Lagos Central Mosque, to which many Muslim organisations and communities active in Lagos State were invited. These included Ansar-ud-Deen, Nawair-ud-Deen, Anwar-ul-Islam, Nasrul-Lahi-l-Fath Society of Nigeria (NASFAT), Muslim Students Society of Nigeria (MSSN), The Muslim Congress (TMC) and the Muslim Lawyers Association of Nigeria (MULAN).²⁵ The attendees resolved that the first step would be to try to persuade the newly elected governor (a Muslim) and the House of Assembly of Lagos State (majority Muslim) to enact a Sharia Courts Bill. A draft bill was prepared, spelling out the proposal in detail. Muslim members of the House of Assembly were approached and asked to introduce the bill into the House for debate and enactment. The bill was also discussed by Lagos Muslims with members of the executive branch, including the governor.²⁶ In 2002, the government’s failure to yield to this demand prompted Lagos Muslims to follow in the footsteps of their Oyo State counterparts by instituting an Independent Sharī‘ah Panel.²⁷

Osun State Muslims geared up the demand for Sharī‘ah after official launching in Zamfara State. Like their counterparts in the southwest, some Muslims in Osun State championed the cause of demanding the establishment of Sharī‘ah Courts. This demand was limited to having Sharī‘ah Courts adjudicate on personal law matters relating to Muslim marriage, inheritance and divorce. Various attempts were made by the Muslims to be officially allowed to use Sharī‘ah for the adjudication of issues relating to personal law matters. For example, the League of Imams and Alfas of Osun State publicly demanded the establishment of Sharī‘ah in the state.²⁸

The demand of the League of Imams and Alfas of Osun State was contained in the memorandum submitted to the Osun State House of Assembly in December, 1999 signed by their Chairman, late Mustafa Ajisafe, the Chief Imam of Osogboland during the review of the 1999 constitution. The memorandum refers to the application of Sharī‘ah during the pre-colonial era in Yorubaland, particularly in Ede, Iwo and Ikirun, which were part of Osun State before Sharī‘ah was abolished by the British. The request was put thus:

...the Sharī‘ah is a constitutional right of all Nigerian Muslims, Osun State Muslims should not therefore be exceptional. It is as a result of this (sic), we want to call on the honourable members of Osun State House of Assembly to critically consider this (sic) memorandum with a view to establishing Sharī‘ah courts in Osun State, since section 275 of the 1999 constitution allows this.²⁹

Different Islamic organisations or groups in the state organised a series of lectures, symposia and rallies on the establishment of *Sharī‘ah*. On Wednesday 27 October, 1999 the Osun State Area Unit of MSSN held a rally at Ansar-ud-deen School, Sabo, Osogbo to demand establishment of *Sharī‘ah* courts in the state. After the Area Unit *Amīr*, Qamarud-din Bello addressed members, they conducted a peaceful protest in the town to call for the introduction of *Sharī‘ah* in the state.³⁰ While reporting the incident, *Punch* reported *inter alia*: “... in Osun State, over 500 Muslims trooped to the streets of Osogbo, the state capital, canvassing the introduction of Sharī‘ah law in the state.³¹

Another daily newspaper, *The Nigerian Tribune*, reported that ‘Muslim youths numbering about 2,000 marched through the streets of Osogbo, the state capital, calling for the introduction of Sharī‘ah law in the state.’ The report referred to MSSN as Muslim youths “...the youths who came out under the aegis of the Muslim Students Society of Nigeria (MSSN) argued that the introduction of Sharī‘ah in all states of the country would check the vices ravaging the country.³²

On January 30, 2000, Osun State chapter of NACOMYO organised a state symposium on Sharī‘ah titled – “Constitutionality of Sharī‘ah: Problems and Prospects in Application.” The symposium was attended by eminent Islamic scholars, legal luminaries and important Muslim personalities in and outside the state. Subsequently, a meeting of some eminent Muslim personalities was held at the NACOMYO Secretariat to review the programme and to take decisions relating to the establishment of Sharī‘ah courts in the state. The meeting precipitated the formation of the “Osun State Committee on Sharī‘ah,” which was constituted to educate and mobilise Muslims for the establishment of Sharī‘ah courts in the state.³³

In 2005, during the consideration of the District Customary and Customary Court Law Bill by the State House of Assembly, the Muslim Community of Osun State submitted a proposal for amendment of the Law to incorporate application of Sharī‘ah Law in the proposed District Customary Court and Customary Court Law of Osun State. The proposal was not put into consideration despite all efforts made.³⁴ When all the efforts of Osun Muslim Community to have Sharī‘ah courts established by the government proved unsuccessful, they decided to adopt the approach of their counterparts in Oyo and Lagos states by establishing a private Sharī‘ah panel. On Sunday, 23 April, 2006, the Osun State Independent Sharī‘ah Panel was inaugurated at the Oja-Oba Central Mosque, Osogbo.³⁵

Since the departure of the colonial rulers, Muslims in the southern part of Nigeria have continued to demand the establishment of Sharī‘ah courts in their areas. The demand has continued without any success. The next section examines the reasons for not achieving success.

Challenges of Establishing *Sharī‘ah* Courts in the Southwest

This segment of the essay seeks to answer certain questions in order to explain the intractable problem of establishing Sharī‘ah courts in Yorubaland. The questions are: Why is it that the establishment of Sharī‘ah courts has been impossible in Yorubaland despite the fact that there is a constitutional provision for it? What are the factors responsible for non-establishment of Sharī‘ah Courts and Sharī‘ah Courts of Appeal in Yorubaland even though the constitution allows such?

The optional nature of the constitutional provision on Sharī‘ah is one of the challenges faced in establishing Sharī‘ah Courts in Yorubaland. Section 275 (1) of the 1999 constitution stipulates a conditional provision thus: “There shall be for any state that requires it a Sharī‘ah Court of Appeal for that state.” The provision poses a challenge in its implementation. This is because the establishment of a Sharī‘ah Court of Appeal is not something that can be easily achieved. It requires proposing a bill that will be passed by a State House of Assembly and will receive the assent of the governor.

It then becomes pertinent to ask a few questions at this juncture. How and in what ways can a state require a Sharī‘ah Court of Appeal? Is it the duty of Muslims to request for it, or is it to be statutorily established by the government of the state? Since some states in northern Nigeria have *Sharia* Courts of Appeal through the constitutional provisions in sections 4 (6); 7 (4) and 275 – 228, why is it not possible for the states in southwestern Nigeria to achieve the same? These are questions to which answers are required if the problem of Sharī‘ah application in southwestern Nigeria is to be solved.

Although Justice Abdul-Kadri Orire, a former Grand *Qādi* of Kwara State, attempted to provide answers to such questions, the problem still persists. It is the contention of Justice Orire that since it is the same constitutional provision in respect of Customary Court of Appeal that some states in the country have used in the establishment of Customary Court of Appeal in their states, such provision could be used to establish Sharī‘ah Courts of Appeal in any state because the provision is identical.³⁶ However, the problem lies in the fact that where such a gesture was proposed, it was not considered. Such example was that of Osun State in 2005 when the Muslim Community of the state submitted a proposal for an amendment of the law to incorporate the application of *Sharī‘ah* in the proposed District Customary Court and Customary Court Law of Osun State during the consideration of the District Customary and Customary Court Law Bill of 2005 by the State House of Assembly. The bill was not considered by the Osun State House of Assembly.

The other option proposed by Justice Orire is that the Muslims in each state of southwestern Nigeria should unite to approach the authorities through memoranda seeking the promulgation of a law to establish both Muslim Courts as well as Sharī'ah Court of Appeal to hear cases from the area courts and on appeals. The proposal is to be made through the State Houses of Assembly.³⁷ The irony is that Muslims in the southwest have not been able to utilize this opportunity either because they are not well informed about it or because they do not know how to go about this constitutional provision on Sharī'ah.

Apart from the aforementioned, there were other challenges encountered by some states in the southwest when requests were put before their Houses of Assembly to pass into law the bill for establishing Sharī'ah Courts of Appeal sponsored by some Muslim groups. These bordered on the unfavourable disposition of the members of the political class in the states even where their governors were Muslims. For instance, between 1999 and 2003, bills for the establishment of Sharī'ah Courts of Appeal were sent to the Houses of Assembly in Oyo,³⁸ Lagos³⁹ and Osun⁴⁰ states, where their governors were Muslims but the bills did not sail through. The failure of the bills showed the nonchalant attitude of these Muslim governors to *Sharī'ah*. This might be because, as observed by Opeloye, "these so-called Muslims are more Christian in their thinking and orientation".⁴¹

Moreover, the difference in faith among the members of the State Houses of Assembly was another major challenge. Unlike in many states in the north, where Muslims were in significant majority in their Houses of Assembly, the situation in the southwest was different. There were instances where Christian members were in the majority in the Houses of Assembly and in few cases where the Muslim members were in the majority. Opeloye gave an analysis of Muslim-Christian representation in the State Houses of Assembly of Lagos, Ogun, Osun and Oyo states between 1999 and 2003. Out of 40 members in Lagos State, 21 were Muslims and 19 were Christians; Ogun had 26 out of which 7 were Muslims and 19 were Christians; Osun had 26 out of which 9 were Muslims and 17 were Christians and Oyo had 32 out of which 18 were Muslims and 14 were Christians.⁴² It is, therefore, observed that in Lagos and Oyo states where the Muslims were in the majority, the margin was rather slim with only two members for Lagos and four members for Oyo over and above the numbers of the Christians. The case was not so in Ogun and Osun states. The gap between the Christians and the Muslims was so wide that there was no way Sharī'ah Bill could be put to vote and it would sail through. Besides, where the Muslims were in the majority with only two members, it would be difficult to also win easily, particularly when the Muslim members were not favourably disposed to Sharī'ah either as a result of their level of commitment to the cause of the Sharī'ah and Islam or because of their loyalty to their party. To average Nigeria politicians, loyalty to their parties seems to override any other thing. The example of this was that of Lagos State where Muslim members of the House of Assembly were approached and requested to sponsor the Sharī'ah Court Bill in the House and none of them was willing to do so.⁴³

The opposition of non-Muslims, particularly, Christians to Sharī'ah compounds the problem of the establishment of Sharī'ah courts in the southwest. The opposition has been vociferously and maliciously displayed in their views which were expressed in both the print and electronic media and during conferences organised to debate the issue of Sharī'ah. Besides all the misconceptions that Sharī'ah is barbaric, harsh and rigid, some Christian leaders do not support the establishment of Sharī'ah courts by the government in the southwest on the ground that the involvement of the government in Sharī'ah matters shows that it tends towards a particular religion and would be partial.⁴⁴ It is even the wish of some Christian leaders that the constitutional provision on Sharī'ah be deleted in the Nigerian constitution. For example, a Christian cleric, D. Dodo, suggested this when he remarked thus:

When the 1999 constitution of Nigeria will be reviewed, the Islamic Sharī'ah law should be removed completely in the subsequent constitution and be observed and practised in the way Christians do with the ecclesiastia.⁴⁵

From the foregoing, it is clear that there are many challenges facing the establishment of Sharī'ah courts in southwestern Nigeria. Such challenges which include constitutional provisions, nonchalant attitude of Muslim politicians and opposition of the Christians need to be tackled for the purpose of finding lasting solution to the problem in the southwestern part of the country. Hence, attempt is made to suggest how the problem can be solved.

Way out of the Problem

Having identified the constitutional provisions as one of the challenges that inhibit the application of Sharī'ah in southwestern Nigeria, efforts need to be made by the Muslims in the region to get rid of these challenges. Necessary machinery should be set in motion in each state to look at the way by which the clause of the constitution can be maneuvered. The people to be involved should carry out the assignment through solidarity and necessary politicking. Akintola, therefore, opines as follows:

The ease and readiness with which the machinery for this is set in motion in a state will be determined by the level of solidarity among the Muslims in the state, the extent of the love of justice and fair play among the citizens of the state and the liberalism or fanaticism (sic) manifested by a state governor and its Assembly.⁴⁶

One important point to be made here is that the machinery mentioned above by Akintola has not been utilized since 1979. It is the contention of this paper that the most significant solution to the problem of establishing Sharī‘ah Courts of Appeal is the demonstration of a high sense of religious tolerance by both Muslims and Christians in the country. The idea of mutual suspicion must be discarded while mutual respect for each other’s faith must be adopted. Since Muslims consider Sharī‘ah as part of their religious requirements, non-Muslims, for the sake of tolerance and mutual respect for the faith of others, should give them the opportunity of applying it in as much as it does not affect them. Muslims too need to listen to the views of the Christians and educate them on their misconceptions about Sharī‘ah, particularly regarding how it would not affect the Christian population negatively.

There must also be necessary interaction and conviction of the people of the political class of the reasons why Sharī‘ah Courts and Sharī‘ah Courts of Appeal should be established. This is necessary so as to pave way for support from both the ends of non-Muslims and politicians in order to allow for easy elimination of the conditional or optional provisions in the constitution about the establishment of Sharī‘ah Courts and Sharī‘ah Courts of Appeal. This is when the entanglement can be removed and Muslims in the southwest will have constitutional freedom to apply Sharī‘ah. In the spirit of fairness and religious tolerance, Adegbite asserts, civil application of Sharī‘ah should by now be nationwide and not confined to the northern states, a situation which can be pinned down to the accident of colonial history. Just as the northern Muslims are entitled to the application of Sharī‘ah, so are their southern counterparts.⁴⁷

Moreover, as a lasting solution to this problem, Nigeria needs to fully allow true legal pluralism. The judicial system must be able to give room for free operation of all systems of law in the country. Common Law, Sharī‘ah Law and Customary Law must be allowed to operate side by side depending on the choice of the people involved. Therefore, for real justice and equity to be attained, full legal pluralism must be allowed. This is a situation where every citizen will be given the opportunity to choose the legal system he or she wants to be adjudicated upon. Furthermore, Nigeria is a nation with multiple social, cultural and religious orders.

The co-existence of various religious orders within a social setting or domain of social life must also give room for co-existence and interaction of multiple legal orders. According to Adegbite, instead of some sections of the country continuing erroneously to refer to the country as a secular state, they should come to terms with the true status of Nigeria as a multi-religious, democratic and liberal state in which every religious group therein is assured of protection and fair treatment. In such a multi-religious and federal country, legal pluralism is a *desideratum*, especially where Islam is one of the religions operative in the country and Muslims would never abandon Sharī‘ah.⁴⁸

Therefore, the belief of some people that Nigeria is a secular state, hence Sharī‘ah should not be allowed there is completely out of place. The word ‘secular,’ according to *Encyclopedia Britannica*, means “non-spiritual, having no concern with religious or spiritual matters.”⁴⁹ Webster’s *New International Dictionary* also defines it as “something of or pertaining to the worldly or temporal as distinguished from the spiritual and eternal.”⁵⁰ Hence, secularism is a system that says that man does not need God. Its primary objective is the total elimination of all religious elements from society. Since Nigerians recognize and worship God in various forms, it is anomalous to refer to their country as secular. The fact that section 10 of the 1999 constitution stipulates that “the Government of the federation or of a state shall not adopt any religion as state religion” should not be misconstrued or misinterpreted to mean secularism. The reasonable interpretation of the constitutional provision, according to Shambo, is that a single religion is prohibited from being imposed on all the citizens of the country. This simply implies that Nigeria is a multi-religious state.⁵¹ The multi-religious nature of Nigeria, therefore, makes the establishment of Sharī‘ah courts necessary in the states where Muslims request it.

Conclusion

The discussion above shows that while Sharī‘ah did not receive proper recognition in the pre-independence or colonial oriented constitutions of Nigeria, it received recognition in the independence and post-independence constitutions. Despite this, however, the constitutional provision which makes it optional for any state that requires it puts its achievability and realisation in a very difficult situation in the southwestern Nigeria. Since over 50 years ago that Nigeria attained independence and wherein provision is made for *Sharī‘ah* in the constitutions of the country, no state in Yorubaland has been able to have Sharī‘ah Courts and Sharī‘ah Courts of Appeal even though there have been agitations and demands in some states in the region. This paper posits that the solution to this problem lies in allowing different legal systems to operate in all parts of the country. The current criminal and civil justice system in the southwestern part of Nigeria should be expanded to take care of the legitimate and constitutional right and interest of Muslim faithfuls. This can only be done by putting in place necessary and enabling legal framework that will give room for the enactment of Area Courts and Sharī‘ah law as well as the establishment of Area and Sharī‘ah Courts of Appeal. The operation of true legal pluralism, therefore, stands a better chance of solving the Sharī‘ah problem once and for all. This is necessary if a united nation is intended. As Williams notes:

The only way consistent with our desire to build a united Nigeria is to explore ways of living together in one country with the liberty of every individual to practise and propagate the religion of his choice.⁵²

Endnotes

1. Abdul-Fatah Makinde, "The Institution of Sharī'ah in Oyo and Osun States, Nigeria, 1890 – 2005" (Ph.D. Thesis, University of Ibadan, Ibadan, 2007). Available on www.sharia-in-africa.net
2. Amidu Sanni, "The Sharī'ah Conundrum in Nigerian and the Zamfara Model: The Role of Nigerian Muslim Youth in Historical Context" *Journal of Muslim Minority Affairs* 27 (2007), 117 – 32, esp. 119.
3. *Ibid*, 119.
4. Ishaq Akintola, *Sharī'ah in Nigeria: An Eschatological Desideratum* (Ijebu-Ode: Shebiotimo Publications, 2001), 116.
5. Ibrahim Seriki, "Sharī'ah Provision in the 1963 and 1979 Constitutions in Nigeria: A Comparative Study" (M. A. diss., University of Ibadan, Ibadan, 1981), 3.
6. Federal Ministry of Information, "Report of the Constitution Drafting Committee (CDC), vol. 2, (Lagos: Federal Government Printer, 1976), 20.
7. *Ibid*, 45.
8. Abdul-Lateef Adegbite, "The Constitutional and Legal Status of Sharī'ah in Nigeria" (paper presented at the seminar on Sharī'ah organized by Nigeria Inter-Religious Council (NIREC), Abuja, Nigeria, June 21 – 22, 2000), 2.
9. *Ibid*.
10. *Ibid*.
11. Mutalib Ambali, *The Practice of Muslim Family Law in Nigeria* (Lagos: Princeton and Associates Publishing, 2014), 42.
12. Makinde, "The Institution of Sharī'ah," 84.
13. Hashir Abdul-Salam, "A Brief Appraisal of Islam Law (Sharī'ah) in Nigeria" *NATAIS Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*, 6 (2001); 36.
14. Tajudeen Gbadamosi, "Sharī'ah in Nigeria: Experience of the Southern Nigeria" (paper presented at the national seminar on Sharī'ah, Kaduna, Nigeria, February 10 – 12, 2000), 7.
15. *Ibid*, 7.
16. Makinde, "The Institution of Sharī'ah," 84 – 85.
17. Muri Okunola, "The Relevance of Sharī'ah to Nigeria," in *Islam in Africa*, ed. Alkali Nuru, *et al* (Ibadan: Spectrum Books, 1993), 28.
18. *Ibid*. 28.
19. *Ibid*.

20. *Ibid.* 29.
21. Makinde, "The Institution of Sharī'ah," 53.
22. Abdul-Fatah Makinde and Philips Ostien, "The Independent Sharia Panel of Lagos State," *Emory International Law Review*, 25:2 (2011); 923.
23. Makinde, "The Institution of Sharī'ah," 86.
24. Lateef Adetona, "The Dynamic of Independent Sharī'ah Panel in Lagos State, Southwest of Nigeria" *NATAIS Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*, 8 (2005), 31.
25. Makinde and Ostien, "The Independent Sharia Panel," 925.
26. *Ibid.*, 925.
27. Adetona, "The Dynamic of Independent Sharī'ah," 31.
28. Abdul-Fatah Makinde, "The Evolution of the Independent *Sharī'ah* Panel in Osun State, South-West Nigeria," in *Sharī'a in Africa Today: Reactions and Responses*, ed. John Chesworth and Franz Kogelmann (Leiden: Brill, 2014), 78.
29. *Ibid.*, 78 – 79.
30. *Ibid.*, 79.
31. *The Punch*, October 28, 1999, 6.
32. *Nigerian Tribune*, October 28, 1999, 2.
33. Makinde, "The Evolution of Independent Sharī'ah," 80.
34. *Ibid.*, 81.
35. *Ibid.*, 89.
36. Abdul-Kadir Orire, "Prospect of Establishing Sharī'ah Courts in Southern Nigeria" (paper presented at a symposium organized by National Council of Muslim Youth Organizations (NACOMYO), Osun State Chapter, Osogbo, Nigeria, January 30, 2000), 4 – 5.
37. *Ibid.*, 5.
38. Makinde, "The Institution of Sharī'ah," 86.
39. Makinde and Ostien, "The Independent Sharia Panel," 925 - 27.
40. Makinde, "The Evolution of Independent Sharī'ah," 78 – 79.
41. Muheeb Opeloye, "The Realization of the Sharī'ah in South-western Nigeria: A Mirage or Reality?", in *A Digest of Islamic Law and Jurisprudence in Nigeria*, ed. Zakariyah Oseni (Auchi: Darun-Nur, 2003), 34.
42. Opeloye, "The Realization of the Sharī'ah," 34 – 35.
43. Makinde and Ostien, "The Independent Sharia Panel," 929.
44. Makinde, "The Evolution of Independent Sharī'ah," 91.
45. David Dodo. "Understanding Christians and Muslims over the Adoption of full Scope of the Islamic Sharī'ah Law in Nigeria" (paper presented at the first national seminar of the Nigeria Inter-Religious Council (NIREC), Abuja, Nigeria, June 21 – 22, 2000), 13.
46. Akintola, *Sharī'ah in Nigeria*, 131.

47. Abdul-Lateef Adegbite, "Sharia in the Context of Nigeria," in *The Sharia Issue: Working Papers for a Dialogue*, ed. A Committee of Concerned Citizens (n.t.; n.p.; n.d.), 78.
48. *Ibid*, 76.
49. *Encyclopaedia Britannica* (Chicago: 1963), 262.
50. *Wester's New International Dictionary*, 2nd ed. (USA: G & C. Merriam Company, 2002).
51. Shambo Bashir, "Secularity versus Multi-religion" (paper presented at the national symposium of Religious Mutual Respect and Peaceful Co-existence organized by the National Council for Genuine Democratic Development, Abuja, Nigeria, January 28 – 29, 1999), 3
52. Rotimi Williams, "The *Sharia* Controversy," in *The Sharia Issue: Working Papers for a Dialogue* ed. A Committee of Concerned Citizens (n.t.; n.p.; n.d.), 29.