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A JURISPRUDENTIAL REVIEW OF THE CONTROVERSIES ON THE NATURE OF ISLAMIC LAW

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ABSTRACT

This paper examined and discussed the sundry controversies surrounding the nature, sources and interpretations of Islamic law. The study was engendered by the fact that differences in views and attitudes to these variables have contributed in no mean way to political and religious unrests in many parts of the world today especially in Africa and the Middle East where Islam has much stronghold. This paper considered it expedient to engage in the study so as to enhance the inevitable development of democracy, rather than theocracy, in enclaves that regard themselves as utterly Islamic in spite of their multi-culturalism and religious pluralism. Discovering that many principles taken as immutable and sacrosanct are not after all eternal and unchangeable, the paper recommended legal reform, avoidance of fundamentalism and fanaticism, religious dialogue, and patriotic sense, among other factors, as the panacea. The methodology used is jurisprudential, hermeneutical, and phenomenological.

Keywords: Islamic Law, Sharia, Jurisprudence, Legal Interpretations

1. INTRODUCTION

There is no doubt that Islam is today spreading like harmattan bush fire. Perhaps, as a result of its proselytist posture, Islam has made inroads into many areas and lands that were hitherto non-Islamic. Very many real Christian condominiums, for instance, have been overrun by Islam. Yet, the Islamic religion does not go without its legal shell which is sharia. Several studies show that Muslims claim that sharia governs the entirety of a man's life from cradle to the grave (Nzomiwu, 1989; Aliyu, 2001; Ozigbo, 1988). Sharia is thus seen as touching all aspects of human life, religious, political, cultural, social, legal, economic, and so on. However, since the foundation and spread of Islam, the question of the meaning of sharia and its place in Islam has become an object of investigation by scholars. Sharia is an Arabic word that literally means "a drinking place or a path leading to a watering hole" (Ubaka, 2000:11). It is interchangeably used with the phrase "Islamic law". For Nzomiwu (1989:117) 'sharia' or 'Shariah' connotes "the clear path to be followed and which is technically referred to as the canon law of Islam". Farlex (2009: n.p.) describes sharia as a "code of law derived from the Koran and from the teachings and examples of Mohammed". Johnson (2009: n.p.) expands the meaning of sharia as "inspired not only by Islam and Koran but also by Arabic traditions and early Islamic scholars". No wonder sharia is often regarded as the "totality of Allah's

commandments as revealed in the Quran and elaborated in the Hadith and Sunna and interpreted by Ijma" (Nzomiwu 1989:117). For Aliyu (2007:142), "sharia jurisprudentially means a clear and straight path designed by Allah the creator of man to walk on". Nzomiwu (1989:117) writes that "sharia is like a network of injunctions and attitudes which govern the life of a Muslim in its totality. It covers every aspect of human conduct and every possible human contingency from the cradle of a Muslim to his grave". Ahmad (1974:9) maintains that sharia is the "code of behaviour which is to decide the rightness or otherwise of any particular thing. It is given by God through the Prophet". The comprehensive nature of sharia in Islam is also underscored by Aliyu (2001:3-4) for whom "Shariah covers all actions, dealings, relations, operations and transactions of a Muslim and involves all his worldly and other-worldly pursuits".

The Shorter Encyclopaedia of Islam (1953: 524) defines sharia as "the road leading to a watering place, the clear path to be followed". The Encyclopaedia describes sharia in six moments. Firstly, it holds that the technical use of the word goes back to some passages in the Koran eg (45: 18): "then we give thee a sharia in religion, follow it and do not follow the lusts of those who do not know." Here, sharia comprises the law of inheritance, the *hadd*-punishments, the commandment and prohibitions (1953:524). Secondly, it is noted in the Encyclopaedia that Allah's law, sharia, "is not to be penetrated by human intelligence. The effect is that "man has to accept it without criticism, with its apparent inconsistencies and its incomprehensible decrees, as wisdom into which it is impossible to enquire" (1953:525).

Thirdly, according to the Encyclopaedia, the knowledge of Allah's commands was originally, after the death of the Prophet, obtained directly from the Koran and Tradition but later among the Sunnis, no one was considered qualified to investigate these sources independently. Knowledge of sharia was communicated to later generations through the system of *'fiqh'* worked out by four orthodox schools and by the authority of infallible '*ijma*' (1953:525). Fourthly, it is noted that during the early period of Islam, no unanimity prevailed as to what were the main duties of Muslims. It holds that for religious appreciation, all actions are classified by sharia under one of the following five categories: obligatory, meritorious, indifferent, reprehensible, and forbidden (1953:526). Fifthly, it is recorded by the that after the death of the Prophet, the successor, the first caliph, even though taking himself as the supreme Judge of the Muslim community, could not pretend to continue his activity as the transmitter of divine revelation. Later developments of the law came after the Umayyad and Abbasid dynasties (1953: 527). Finally, it is held that "one should not draw too sharp a line between the doctrine of the sharia and the law as enforced by the state" (1953:527).

The cacophony of opinions has greeted the nature of Islamic law. Varied and conflicting voices have been raised on the essence, meaning, source, and validity of Islamic law. Discussion of these questions has become necessary in the event of Islamization of various enclaves that are also increasingly claiming to be constitutional democracies. No doubt, the issues pivot around whether or not adoption of full sharia is compatible with democratic tenets. The thrust of this paper, however, is restricted to reviewing the controversies surrounding the nature, source, and the theories of authenticity of those sources as propounded by different schools of jurisprudence. The ultimate aim is to delineate the possibility of reforming sharia to suit the situation of plural and multi-religious societies of today.

2. DISCUSSIONS

2.1 THE CONSTITUENT DEBATE

The questions of the nature and the maker of Islamic law have divided scholars into two major debating camps. At one end are those who believe that sharia in all its ramifications is a purely divine dictate, and hence an immutable and eternal injunction. At the other extreme are

scholars who are convinced that the primary sources of Islamic law on which the secondary sources are based did not set out to provide legal codes in the modern sense of legislation. Hence, they argue that what is known today as sharia law is a consolidated and later effort of jurists in an attempt to control the behaviours of men in a subsequent and emergent Islamic communities and societies. In order to appreciate the beauty of the engendered controversies, it may be apt to x-ray these diverse views one by one and draw a response.

There is no gainsaying that many a scholar understands sharia as the heart and the soul of Islam. For these, sharia is ordained by Allah and constitutes the only path for man's salvation. Mustapha (2001: 17) writes that "sharia can be defined as the complete universal code of conduct drawn by our creator Allah through His messenger Muhammad (SAW) to mankind detailing the religious, political, economic, social, intellectual and legal systems". For him, sharia "is meant for universal application, covering the entire spectrum of life, prescribing that which lawful (halal) and prohibiting that which is unlawful (Haram)".

Mahmood (1998: 49) notes that "sharia connotes the system of laws decreed by Allah, which must be obeyed by every Muslim in his relationship with Allah and with fellow human beings…. It is the divine set of rules revealed by Allah through His Holy Prophet Muhammad (SAW) for the regulation and guidance of conduct, affairs and life of mankind, including civil and criminal matters or disputes". Poignantly, for Maududi (1980: 50), "sharia is a right and complete code and or scheme of life for the entire human race". Thus, sharia is described as a comprehensive all encompassing legal system and a universal way of life. No wonder Babajo (2007: 106-107) outlines the many aspects of Sharia:

> Sharia is comprised of several branches or parts, namely: rituals (ibabat) like faith or belief (tauhkf), prayers (salat), fasting (sawm), payment of poor rate (zakkat), pilgrimage (haji), acts of social etiquette (adat), law of transactions (mu'amalat) such as personal status like marriage, gifts, custody of children, succession, etc, property law, law of contract, mortgage, company law, and other related commercial transactions. Other aspects of mu'amalat are constitutional law, international law and diplomacy, law of evidence, procedure and administration of justice. Finally sharia covers the law of torts and crimes.

The all-encompassing nature of sharia is equally affirmed by Anderson (1976: 3):

> Sharia is a word that originally signified the way to a watering place, and then came to mean the path of God's commandments. As such it covers every aspect of the law as this is classified today (national and international, public and private, criminal and civil) together with a vast amount which would not be regarded as law at all in contemporary Western thought (religious and social duties, matters of rituals and devotion and rules for seemingly conduct).

Anderson's view is in consonance with that of Ezzat (2004: n. P) for whom "sharia is a path or road of Islam which encompasses belief and morality for an individual as much as a legal, economic and social framework, to govern a society". Similarly, Aliyu (2007: 143-146) adumbrates a number of characteristics of sharia. He claims that sharia is divine in origin since it embodies the will of Allah who is sovereign and the ultimate lawmaker for the mankind though the Holy Prophet Muhammad. He also notes that sharia is comprehensive and all-encompassing dealing with every aspect of human activities and endeavours, and regulates spiritual, legal, political as well as socio-economic aspects of human affairs. Aliyu (2007: 145)

further holds that "sharia is immutable and thus a system for all times and generation. It is a universal system which in not limited to a certain time or generation or to a certain place or people". Finally, Aliyu (2007: 145) maintains that "sharia is practicable for it takes the facts of reality into consideration in its rules and regulations relating to human conduct.

Besides, some scholars believe that sharia in Islam has all it takes to represent an intricate connection between law and religion. Schacht (1964:1) has pointed out that "the sacred law of Islam (sharia) is an all embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects…." This intimate religio-legal connection is one of the main sources of strength of Islamic Law since the law is accepted without question by the great majority of those subject to it. But Allot (1980:143) observes that this religio-legal close relationship is also a source of serious problem. Allot observes that "of all the world religions Islam poses the greatest problems from the legal point of view when its adherents form a substantial portion of the population of a non-Muslim state". According to him, "this is because of the limitless nature of the legal demands made by its adherents, who in the name of freedom of religion, demand a free and full recognition of their religious law as well - a claim not made in such absolute terms by other religions in the modern world".

Again, in Islam, the nature of sharia is such that it embodies ethical standards that are based on divine revelation. Most Muslim scholars think that what is truly good and evil cannot be rationally determined and that the only guide that men can trust is provided by the sharia. This is contrary to the position of Christianity where most Orthodox Christian Teachers following Saint Paul (cf Rom. 2:15) hold that the basic tenets of natural law can be rationally known even in the absence of a divine revelation. This Christian thought peters out in the Thomistic idea of law as an ordinance of reason. But this position is radically different from what obtains in Islam. Muslehuddin (1986:271) articulates that absolute justice cannot be known rationally applied. In Islam, Sharia thus, takes precedence over the state. This jurisprudence is contrary to many Western legal and political theories according to which the state is a creature of the law as the very organs and authority of the state are thought to be created by legal rules. Thus, in Islam, the law precedes the state and Schacht (1964:5) holds that "the state exists for the sole purpose of maintaining and enforcing the law". Accordingly, Gibb (1955:3) argues in favour of this precedence that "since God is Himself the sole legislator, there can be no room in Islamic Political theory for legislation or legislative powers whether enjoyed by a temporal ruler or by any kind of assembly. There can be no 'sovereign state…." Again, as to be expected of a sacred law which claims to be based on divine revelation, sharia law is also strongly traditionalist. This characteristic is strongly reinforced by the fact that, as was indicated above, human reason is thought by Muslims to be unreliable in attaining moral truth. For anybody who accepts these premises, "the only safe course of action" according to Elegido (1994:140) "is to stress fidelity to the original sources".

Furthermore, Olagunju (2008:156) observes the indispensability of sharia to Islam as a religion. He believes that "Islam and sharia are twin aspects of the same subject" and one "cannot talk about one without referring to the other". He holds that "most Muslim scholars do not mince words to assert that Islam is Shariah and Shariah is Islam" (Ibrahim, 2003; Haruna, 2003; Ahmed, 2003; Uthman, 2003). No wonder Abdillah (2008: 51) believes that "sharia is the most important and distinctive aspect of Islamic teachings in the life of a state so that its existence is becoming an indicator of religiosity of a Muslim country. According to the comprehensive nature of sharia, Aliyu (2008: 162) writes of the scope of Islamic law as extending to "know [ing] what is absolutely good and just … depend upon revelation which is the only source of genuine knowledge." These are also embedded in the followings:

- Ibadah (spiritual laws or laws which regulate the way Muslims worship). This embraces Tauhid (science of the unity of God), salat (Islamic ritual prayers), Saum (fasting), Zakat (poor rate) and Haji (pilgrimage);

- Al-Ahwal al-Shakhisyyah (personal laws) which include law of marriage, divorce, custody of children, issues bordering on paternity, inheritance and succession, will, bequest, endowment and disputes arising therefrom;
- Mu' amalat (law relating to transactions generally) which includes property and title thereof, possession, contract, sales, hiring, pledge, bailment, trust, mortgage, partnership, etc.;
- Uqubat (law relating to crimes and punishment thereof) which embraces either crimes against God and their punishments and Hudud-crimes against fellow human beings and their punishments;
- Akham sultaniyyah (law relating to the state and its administrative machineries) which include administrative laws, duties of rulers, responsibility of citizens, constitutional law, rule of law, human rights etc.;
- Akhlaq (law of morals) which includes duties, which a person owes to himself, his family, neighbours and extending to animals and other creatures;
- Al-Adab and Al-Qada (law of Ethics), which includes the administration of the judiciary generally such as the appointment of judges, their discipline and procedure in the courts; and,
- Siyar (International laws), which include international law generally, international diplomacy, law of treaties and conventions, arbitration, etc.

Olagunju (2008: 162) concludes that "there is nothing left in the realm of secularity" given the above scope of sharia. No wonder Malik (2001: 27) claims that "in Islam, one cannot find a no man's land to which religion does not lay a claim". Ahmad (2002: n.p) agrees with this proposition: He holds that "sharia is not a matter of choice of believing Muslims". For him, "Islam is a total package; and a community cannot be Muslim by choosing between the three aspects of Islam: a monotheistic faith, practical ritual (prayer, fasting, charity, etc.), and law or Shariah (marriage, inheritance, contract, crime, etc.)". Ahmad maintains that "by accepting the Islamic faith, one is obliged to submit and let all the three categories apply to his entire life". Salvation, according to Islam, depends on the three jointly.

But Ahmad is not alone in observing the pivotal role of sharia in Islam. Othman (2008: 110) maintains that "Shariah is indeed a central concern in the private and public life of a majority of contemporary Muslims". For him, sharia "has a paramount role in the public life of Islamic societies, for it provides the main reference for shaping and developing ethical norms and values that are the basis of public law and public policy in many Muslim countries".

More still, the above claim of the divine, comprehensive and indispensable nature of sharia in Islam is also discernible in the views of scholars who study the objectives of sharia. Maududi (1986: 50) believes that the main objective of sharia is "to construct human life on the basis of ma'rufat (virtues) and to cleanse it of the munkarat (vice)". In line with this opinion, Babajo (2007: 159) affirms that "sharia is meant to guide the steps of man in his dealings with what it forbids and what it allows or ordains for his benefits and interest". Hence, for him, "sharia stipulates the law of God and provides guidance for the regulation of life in the best interest of man" (cf also Aliyu, 2007: 146-148).

The above claims of the divine source and immutability of Islamic law do not go unchallenged. Many scholars are of the position that sharia rather than described as a divine law should at best pass as a religious law systematized and synthesized by early Islamic jurists to respond to the needs of a historical circumstance. Ozigbo (1988:48) writes that "as a legal system, the Shariah was not, like the Quran, a direct revelation from God. It is largely a human legal product. It had its history. It was produced by Muslim religious scholars and teachers (ulama) during the classical age of Islam – the first two centuries of the Abbasid Caliphate (c. 750 – 945 AD)".

In fact, for Ozigbo (1988:47), Sharia would rather be referred to as ‘a sacred law’ than as a divine law. He argues that “Islam has no formal commandments corresponding to the Judeo-Christian precepts”. The Sharia “is not a code since it was never codified in the strict sense”. In order to further buttress the preponderance of the human participation in the making of Sharia, Ozigbo (1988:48) observes that “the Quranic law and other injunctions laid down by the prophet were in no way comprehensive. With time, it became necessary that a full system of law be evolved to supplement the rudimentary guidelines of the Quran and the hadith for the daily needs of the faithful… Muslim laws at the time were being formulated by judges eager to fit the legal system into the precepts and spirits of Islam”.

The quintessence of Ozigbo’s argument is that Sharia as a legal system had a long process of development in which input of man cannot be gainsaid or jettisoned. In its systematized form, he argues, Sharia is largely a human product, having been put together by a long process of theologizing and screening by eminent Muslim theologians and jurists of the 8th and 9th centuries A.D. Thus, Ozigbo holds it was not until the 11th century that the outlines of the law were fully set and formalized.

In the same vein, Fadl (2010: 122-123) writes that “although it is claimed that Shariah comprised a set of objectively determinable divine commands the fact is that the divine law was the by-product of a thoroughly human and fallible interpretative process”. Accordingly, he affirms, that “whatever qualified as a part of Shariah law, even if inspired by exhortations found in religious texts, was the product of human efforts and determinations that reflected subjective socio-historical circumstances”. Fadl (2010: 139) holds that even as “the perfection of Shariah is in the mind of God”, he nonetheless observes that “anything that is channelled through human agency is necessarily marred by human imperfection”. As such he observes that “sharia as conceived by God is flawless, but as understood by human beings it is imperfect and contingent”. Therefore, Sharia is not to be regarded simply as a bunch of positive rules but also a set of principles, methodology and a discursive process that searches for the divine ideals. The domino effect is that sharia is a work in progress that is never complete. Moreover, Fadl’s further findings are quite revealing. Fadl (2010: 139 – 140) takes “a religious state law as a contradiction in terms”. For him, “either the law belongs to the state or it belongs to God, and as long as the law relies on the subjective agency of the state for its articulation and enforcement, any law enforced by the state is necessarily not God’s law”. Fadl (2010: 140) poignantly puts it:

> The law of the state, regardless of its origins or basis, belongs to the state. It bears emphasis that under this conception, there are no religious laws that can or may be enforced by the state. The state may enforce the prevailing subjective commitments of the community, or it may enforce what the majority believes to be closer to the divine ideal. But in either case, what is being enforced is not God’s law. This means that all laws articulated and applied in a state are thoroughly human, and should be treated as such. This also means that any codification of Shariah law produces a set of rules that are human and not divine. These laws are a part of sharia law only to the extent that any set of human legal opinions can be said to be part of Shariah. A code even if inspired by Shariah, is not Shariah; a code is simply a set of positive commandments that were informed by an ideal, but do not represent the ideal.

Thus, for Fadl (2010:131) “sharia is a general term for a multitude of legal methodologies and a remarkably diverse set of interpretative determinations”. Hence, is spite of the dogmatic assumptions of many Muslims, sharia law constitutes the sum total of the subjective engagements of legal specialists with texts that purport to represent the divine will

(Fadl, 2010: 131). Fadl (2010:165) argues that structurally, sharia is comprised of the Quran, Sunnah and fiqh (juristic interpretative efforts). Accordingly, sharia substantively refers to three different matters, namely, general principles of law and morality; methodologies for extracting and formulating the law; and the *ahkam*, which are the specific positive rules of law. Fadl (2020: 165) observes that in the contemporary Muslim world, there is a tendency to focus on the *ahkam* at the expense of the general principles and methodologies. Further, it is entirely possible to be sharia-compliant, in the sense of respecting the *ahkam*, but to ignore or violate the principles and methodologies of sharia.

More still, the mediation of human beings in the articulation of Islamic law is also maintained by Safi (2009: 8). He affirms that although the early jurists relied primarily on the Quran and the practices of the Prophet to elaborate the rules of sharia, yet sharia was historically developed by applying human and independent reasoning (*ijtihad*) to revealed texts with the aim of developing a normative system capable of regulating individual actions and social interactions. Similarly, Tellenbach (2008: 115) identifies a number of phenomena that suggest a great deal of the human element underlying the divine claim of sharia law vis-à-vis its daily practice:

> To begin with, the Koran is not a code of law, as some people suppose. It contains only a few immediate legal norms, most of them related to family and inheritance matters. The Sunna, the authoritative tradition of what the Prophet Muhammad said, did, and tolerated, is similarly limited. On the other hand, the facts of life that have to be dealt with are unlimited in their diversity and in a state of constant flux. This is why Islam developed a highly differentiated jurisprudence (fiqh) at a very early stage, bringing forth a methodology of interpretation that, in many cases, implies legal development. And jurisprudence is a matter for human beings, even if its fundamental purpose is to divine the will of God.

Chatting the same course of reasoning, Krawietz (2008: 35) argues that "the primary purpose of the Koran is to exhort and edify, and the number of verses that are legally informative is limited". For him, "scholars are able to interpret these verses only if they consult a multitude of other sources or methods". This exercise in view of interpretation is what is known as fiqh, which consists in "an attempt to make sharia speak". Krawietz (2008: 38) attests to the contextual and historical nature of Islamic law:

> The normative content of the Shariah is ambiguous and has given rise to numerous interpretation variants in different contexts throughout the course of Islamic history…. A large portion of the shariah's legal provisions, were not formulated in detail either by God or by his emissary, which is why they cannot be declared divine law by any human being with anything approaching ultimate certainty. In other words: Most tenets are modifiable or even negotiable, at least within certain limits. They only apply in their proper context, and they have to be reformed or even reformulated in each era to adapt them to recent developments in the light of the general principles of Islam.

Furthermore, the controversy surrounding the nature of sharia as to whether it is divine or human has constituted on the issue before the courts in many Arab countries. In Egypt, the Supreme Constitutional Court was faced with the interpretation of Article 2 of the Egyptian Constitution of 1971 as amended on 22 May 1980 which states that the "principles of Islamic

Shariah" are "the major source of legislation". In a decision of 15 May 1993, the Court held that the provision implied that the legislator was bound to the principles of the Islamic Shariah in the sense that legislative enactments may not contravene Islamic rules which are "definite with regard to their existence and textual basis". The Court however explained that these "definite rules" only comprise "the general principles and immutable sources of Islamic law which are not open to interpretation". In contrast to such immutable rules of the general level, the Court held, there are specific rules which are based on interpretation. Such rules are open to *ijtihad* and to an interpretation that fits the "change in time and clime" as long as the interpretation "conforms to the overall spirit of the Shariah (Balz, 2008: 122-123). The result is that Egyptian courts readily acknowledge that although the legislator is bound to the ideas and principles of the sharia, there is discretion and flexibility with regard to how these principles are put into practice. Surely, this, in effect, allows the courts to define an authoritative contemporary understanding of the tradition of Islamic law within the framework of the nation state. (Balz, 2008: 123).

Moreover, the preponderance of human contribution in the shaping of Islamic law finds support in an address by Imam (2003: n. p). According to him "the word sharia simply means law in Arabic" and the "root word means the way". For Imam, "sharia laws are not divine but merely religious, being based on human interpretations of divine revelation". He argues that "for the most part, the laws themselves are not directly outlined in the Quran". He further maintains that "even the oldest schools of sharia did not exist until many decades after the Quranic revelations and the Prophet's death". "This", for Iman, "demonstrates that they are not divine directives handed down directly from Allah, but products of human judicial reasoning and interpretation or ijtihad in Arabic". Perhaps, this is why Westbrook (1993: 825) points out that "the Quran does not constitute a legal code". Johnson (2009:n. p) seems to realize this when he defines sharia as "a system of law inspired by Islam and the Koran, as well as Arabic traditions and early Islamic scholars". Hence, although Johnson (2009: n. p) observes that "sharia is understood to rule not only Muslims but those living within a Muslim society and governs all of a persons life", she is quite convinced that sharia is only inspired by and not codified in the sources. She substantiates the flexibility of Islamic law by noting that "sharia's influence on the law in Muslim nations varies widely". Besides, it is argued that "there is no common understanding of sharia among Muslims, as Islamic law is based on the interpretation of the Koran and has never been codified". Thus, "the term sharia occurs only once in the Koran, and in the context of morality, not law". Further, the existence of the four schools of Islamic jurisprudence with their diverse interpretations of the Koran betrays the post-Koranic and historical character of sharia.[1]

The relevance of the above discourses lies in the fact that the claim of the divine nature of sharia is not to be taken for granted. It seems that the pendulum of the debate tilts in favour of the idea that sharia as it is today in spite of divine inspiration is mainly a product of human efforts and peters out of socio-historical circumstances. This is evidenced by the fact that many koranic verses were revealed in and relate to particular situations. The consequence is that sharia laws inspired by the Koran and other sources must be interpreted and applied bearing in mind the context in which they were developed. Hence, the belief that Islamic laws must be enforced as they are developed even by the early jurists without any rethinking appears unacceptable (Engineer, 2009: n. p). It therefore goes without saying that the more compelling view is that sharia evolves over time and is contextual. It cannot thus be considered divine and immutable, nor is it to be accepted unquestioningly by all Muslims and all peoples.

Another aspect of the debate that has occupied the minds of scholars in Nigeria is whether or not sharia can be regarded as customary law. This has divided scholars into debating camps. Okany (1984:39) writes that "customary law may be divided in terms of nature into two classes, namely, ethnic and non-Muslim customary law, and Muslim law". This position is

[1] (http://www.nytimes.com/2005/09/16/opinion/16iht-edtibi.html?-r=1).

made explicit by section 2 of Native Courts Law, 1957 of Northern Nigeria which provides that "native law and custom includes Muslim law". Elegido (1994:136-137) observes that the legal basis and nature of sharia are entirely different from those of ethnic customary law. He argues that it is a religious law based on the Muslim faith and is supposed to be applicable only to members of that faith. For him, in Nigeria, sharia is not an indigenous law but a received customary law introduced into the country as part of Islam. It is not grounded in any particular locality and can apply in appropriate cases throughout the country. Asein (2005:118) is perfectly in agreement with this idea of sharia. He holds that "Moslem customary law, unlike the indigenous customary law, is based on the Islamic faith, largely written, relatively more rigid and uniform. Its original and primary source is the Quran although there are different schools brought about in the second century of the *Hijira* each with its respective interpretation of the law". This understanding received a judicial stamp in the case of *Wali v. Ibrahim* (1997) 9 Nigerian Weekly Law Report, 160. This is nonetheless opposed to the position of the Supreme Court of Nigeria per Wali, JSC in the case of *Alhaji Alkamawa v. Alhaji Bello & Anor* (1986) 6 SCNJ, 127 at p. 136. The court held that "Islamic law is not the same as customary law as it does not belong to any tribe. It is a complete system of universal law, more certain and permanent and more universal than the English Common law". This judicial interpretation has been adopted by Elegido (1994:136-137) who argues that sharia is different from customary law in that the former unlike the latter is a written law by virtue of which it is a coherent body of doctrines. Elegido notes that although "… Islamic law is administered as if it were one more variant of customary law, this should not blind one however to the radical differences which exist between Islamic law and the traditional systems of African Customary Law". For him, Islamic law, unlike customary law, "is based on a sophisticated corpus of written legal sources".

2.2 THE QUEST FOR ORIGIN OF SHARIA LAW

Sharia as noted earlier is the canon law of Islam. Studies on its sources have also engendered a lot of controversy. Adigwe (2000:26) identifies eight sources that are respectively classified as primary, secondary or subsidiary. While the *Koran* and the *Sunna* (traditions of Muhammad) occupy the prime position, *Ijma* (consensus of opinions of Muslim jurists) and *Qiyas* (deduction or analogy) are regarded as secondary sources. *Istihsan* (jurisfic preference), *Istidlal* (juristic reasoning), *Istislah* (juristic equity), and *urf* and *adat* (custom and usage) are all lumped together as subsidiary sources. Some comments on these sources may be helpful.

There is no doubt that the Koran is the first and the most important source of Islamic law. Any law that is directly derived from the Koran is regarded as permanent. It is considered as the direct commandment of Allah, who is all-knowing, all-wise, and all-powerful. Therefore, its jurisdictions are claimed to be timeless. The Sunna on the other hand embodies the teachings, examples and the practices of Muhammad. The sayings of Muhammed (hadith) constitute the most important aspect of the Sunna. They are followed by that which Muhammad practised himself and then what was done in his presence and which he seemed to have approved. As a major source of law, the Sunna laws are regarded as permanent and binding on all Muslim societies at all times without modification. Commenting on the importance of the Sunna, Hughes (1965:285) says:

> The Sunna law proves that although the Quran contains much that binds the Muslim, it does not contain all; hence the life style of Muhammed comes into consideration.

It is therefore not surprising that the early jurists relied primarily on the Koran and the practices of Muhammad to elaborate the rules of sharia (Safi, 2009). However, these jurists did not feel that the Sunna has an authority independent from the Koran, and hence did not hesitate

to reject a hadith narration whenever it was in a clear contradiction with a Koranic statement (Safi, 2009). This however detracts from the convictions of the Shafii School of Islamic jurisprudence for which the Sunna was an invaluable source of law on par with the Koran, and which further insisted that it enjoyed an independent authority (Safi, 2009).

Ijma and *qiyas* constitute the secondary sources of Islamic law. Ijma is the consensus of opinions of Muslim jurists, within the provisions of the Koran and the Sunna, on any particular legal question which is not clear from either the Koran or the Sunna. In other words, it is the art of or science of legal interpretation of problematic passages or issues from the Koran or the Sunna. Byang (1988:40) gives an example of how Ijima legislates with how the punishment of 80 lashes for drunkenness was arrived at. While the Koran 24:4 holds that the offence of false accusation attracts the punishment of 80 lashes, the jurists agreed that the same punishment should apply to a drunkard who is likely to commit the offence of false accusation when drunk. On the other hand, qiyas is a deduction from a clear text of the Koran, Sunna or Ijima to a problem that has no clear guidance from any of the mentioned sources. But the deduction and the application will be guided by the general principle of sharia. Hence, because the Koranic texts were given in a concrete form, whereby the Koran commented on the actions and interactions of the early Muslim community, and directed early Muslims in concrete situations, the jurists applied qiyas to expand the application of the Koranic precepts to new cases. According to Safi (2009:n.p.), "the qiyas technique…requires the jurists to identify the efficient reason (*'illa*) of a specific Quranic statement, and to use this reason as the basis for extending the application of the Quranic precept to new cases". For example, early jurists extended the prohibition of wine to all intoxicating substances on the ground that intoxication was the reason for the Koranic prohibition of wine (Safi, 2009), just as the jurists utilized the statements and actions of the Prophet Muhammad and his companions as a means to arrive at a better understanding of the revealed texts. However that may be, Ahmad bin Hanbal insists that qiyas have to be used only as a last resort. He requires that even a weak hadith has to be given priority over qiyas (Cited in Safi, 2009).

Furthermore, some subsidiary sources are also recognized. By virtue of *istihsan* (juristic preference), for instance, one can legislate for non-prohibited matters or introduce a qiyas for a common good in conformity with the spirit of sharia. Massod (1980:8) gives an example of Istihsan with the contract of hire of service thus:

> The sale of non-existing good is void. By analogy (Qiyas), contract for hire of service was considered as sale of a thing not in existence and therefore void. But ordinary contract of hire is sanctioned by Quran, Sunna and Ijima which provide a stronger basis than analogy. Therefore through Istihsan, Qiyas was disregarded, and contract of hire of services was regarded valid.

According to this example, there is a juristic preference against analogy. Istihsan means that the jurist is not bound by the apparent reason of a particular rule, but could utilize other reasons of sharia whenever deemed more relevant. Istislah on the other hand connotes the legislation on those things that the Koran and the Sunna are silent on, but which may benefit the Muslim community. Istislah allows the jurist to base the rules of sharia on public interests and utility, rather than confining them to efficient reason ('illah). An example is that a Muslim ruler can impose additional taxes to meet any national emergency. Morestill, *istidlal* (reasoning) means legislating on matters on which neither explicit injunctions nor even a precedent exists. This source of law seems to provide for the dynamic and changing nature of society. *Urf* and *adat* (custom and usage) include customs and habits that are common, frequent, and reasonable and do not conflict with other texts of sharia, and thus can become law. All the above sources

ensure that sharia touches all the aspects of the life of a Muslim. Maududi (1960:46) outlines the following aspects:

> Religious rituals , personal character, morals, habits family relationship, social and economic affairs, administration (politics), rights and duties of citizens, judicial system, laws of war and peace and international relations….

Discussion on the sources of Islamic law cannot be considerable without a note on the concept of *ijtihad* (intellectual reasoning or hermeneutics). Although it is often claimed that the door of ijtihad has been closed since the 10th century, the early jurists recognizing the imperative of rational mediation for understanding the rules of sharia, exerted a great deal of time and energy to define the grammar of interpreting the divine texts and the logic of reasoning about their implications. It is the consequent differences in methodological approaches that led to the differentiation of the various schools of jurisprudence which issue this researcher will soon examine. Hence, while Shafii confined the ijtihad to qiyas declaring all other legal reasoning to be arbitrary and Hanbali seeing it only as a last resort, Hanafi and Maliki were able to escape the severe restrictions of Shafii and Hanbali schools by employing the techniques of istihsan and istislah. This desire of Hanafi and Maliki jurists to circumvent and overcome the literalist approach that equates ijtihad with qiyas (Shafii), or with linguistic explication of the Koran by references to hadith (Hanbali), has inspired them to develop methods aimed at prioritizing sharia rules and principles. Thus, methods such as *al-qawa'id al-fiqhiyyah* (juristic rules) and *al-maqasid al shariyyah* (sharia purposes) (*maqasid* approach) are geared towards systematization of the sharia rules by eliminating internal contradiction. For instance, by its emphasis on meaning, reasoning, and purposes, the maqasid approach provides a portent tool for reforming historical sharia, as it rejects the literal reading of statements apart from their rationale, and insists that those rationales cannot contradict basic Islamic values. Therefore the *maqasid* approach can be summarized in the following points:

> (1) Sharia rules purport to promote human interests; (2) Sharia consists of hierarchy of rules whereby the particular rules (ahkam juziyyah) are subsumed under universal laws (qwanin kulliyyah); (3) General rules must be modified to accommodate wherever possible the particular rules; (4) Particular rules that contradict general rules should be rejected or ignored; (5) The various rules and laws of sharia aim at advancing five general purposes: the protection of religion, life, reason, property, and progeny (Safi, 2009).

The effect of the above study is that Islamic law is a product of multifarious sources, some of which are claimed to be divine and others clearly human. It seems that apart from the Koran which revelation nevertheless were conditioned by historical necessities and vicissitudes , other sources of sharia such as the *sunna, ijma, qiyas, istihsan, istislah, istidlal, urf* and *adat* are surely products of man's intellectual and cultural capacity.

2.3 AN INSIGHT INTO THE ISLAMIC JURISPRUDENCE THOUGHT

One serious contention in the articulation and consideration of Islamic law is no doubt the existence of the multiple schools of sharia jurisprudence (*fiqh*). This result was precipitated out of efforts, in 8th century A. D., and thereafter, of jurists who sought to determine the answers to questions of legal and personal practice of Islam. In the course of this attempt, the Koran and Sunna were applied where they had a clear answer to a question. Ozigboh (1988:85)

notes that answers were also sought from hadith reports, equity, social utility, consensus of legal authorities (ijma), or from inferred analogy from hadith reports (qiyas). Soon these efforts graduated into traditions of Islamic jurisprudence which had grown in the principal capitals of Iraq, Syria, and Hijaz. Schacht (1964:7) observes that these traditions or schools "disputed with each other about methods and rules, and came to be called after the most revered master of each". (cf also Coulson, 1964: 12; Safi, 2009: n.p). Moreover Ozigbo (1988-85) holds that each school usually called "a *madhhab* (a chosen way) was tied to an ideological position rather than to a geographical area". He observes that "it was the relative attitude of each school to the roots or sources of Islamic law (Quran, Sunna / hadith, Ijma, Qiyas, ray) that gave each its marked characterist". In addition, Ozigbo (1988: 85) maintains that "all the Muslim sects (Sunni, Shiite Kharijite, etc) were interested in working out their respective schools of fiqh". However, the four main traditions of Islamic law (the Hanafi, Maliki, Shafii and Hanbali) which interest this researcher are the ones worked out by the Sunni Ulema. The Shiites and Kharijites worked out their own schools which however were not fully developed. As a rule, each Muslim chooses the school of law he would follow but especially the one prevalent in his region. It may be *apropos* to comment briefly on each of these traditions before drawing the implications.

The first of the Sunni schools to emerge was the Hanafi otherwise called the Iraqi school of law. It was founded by Abu Hanifah (699-767 AD) who regarded the local practice of Islam at Kufah as identical with original Islam. Although all the schools accepted the Koran and the Sunna as the main sources of sharia, the Hanafi School did not insist on the mere letters of the Koran and the Sunna. Accordingly, the tradition sought to enrich these sources with judicial speculation based on the circumstances of space and time, and freely employed legal analogy and the principle of equity. The Hanafi School holds sway in Turkey, Western Asia, Arabia, India and Lower Egypt. About 180 million Muslims adhere to this school which has been described as the most liberal of all the schools of Islamic law (Ozigbo, 1988: 86).

The second school was the Maliki founded as it were by Malik Ibn Anas (715 – 795 AD) and referred to as the Medina school. The school preferred the Muslim tradition prevailing in Medina as the most original and authentic in Islam. Malik believed that the Medinan practices were uncorrupted and had remained as they were in Muhammad's days. Hence, the consensus of opinion in Media regarding any Islamic tradition was final. Maliki book *al-Muwatta* (the level path) in which he preserved the old Medinese law is about the oldest surviving corpus of Islamic law. Today, Maliki jurisprudence prevails in North Africa (with the exception of Lower Egypt), East Arabia, Upper Egypt, Republic of Sudan and West Africa. In fact, Maliki is almost the only school of Muslim law throughout West Africa and the Maghrib. Particularly, that is the only acceptable version operating in Nigerian Islam. Unlike the liberal Hanafi School, the Maliki is conservative and commands about 100 million Muslims (Ozigbo, 1988: 87).

The Shafii is the third school of Sharia, and was founded by al-Shafii (767 – 820 AD). Though al-Shafii studied under ibn Malik, he so improved on the later's position that his legal theory became a separate school *sui generis*. Distrustful of the ever-growing number of hadith reports, he rejected all local traditions (even of Medina) in favour only of those ones traceable to the Prophet Muhammad himself. Al-Shafii was not in sympathy with the emphasis on personal opinion and non-religious sources in the older legal schools. Hence, he took the Medina ideal to its incontrovertible Islamic principles, and sought to show that it was possible to derive the whole sharia from the Koran alone, whose giver, interpreter and exemplar was Muhammad. In this understanding, the Sunna could be seen to issue from the Koran. Again hadith reports traceable to Muhammad must for validity show an unbroken and authentic chain of guaranteed transmitters. This criterion was meant to eliminate all fictitious and doubtful hadith reports. The Shafii School made only secondary allowance for personal judgment and the reasoning of jurists (ray). It allowed the legal principles of equity, public interest, consensus and analogy, but insisted on rigorous critique of hadith reports (Ozigbo 1988: 88). Some

scholars regard the Shafii system as normative of Islamic science of law, ethics and cult, through which the sharia was fully developed (Anderson, 1954; Goitein, 1966). Ozigbo (1988: 88) argues that "it was only with the Shafii School that Islamic jurisprudence was based on the four main sources of sharia, namely, the Koran, hadith, ijma and qiyas". It is observed that Shafii School holds the mean between the liberal Hanafi School and the conservative Maliki School. It is the legal regime in Lower Egypt, East Africa, Western and Southern Arabia, Syria, and Southeast Asia, and commands about 105 million Muslims as followers (Ozigbo, 1988: 88).

The Hanbali school founded by Ibn Hanbal (780 -855 AD). Ibn Hanbal was a disciple of al-Shafii, and became the leader and spokesman of the hadith folk who revered the Koran as the Word of God and in fact as being something of God himself. The Hanbali School insists on uncompromising adherence to the letter of the hadith. It rejects the principle of ijma and insists that each major teacher or interpreter should feel free to start *de novo* in accordance with the need of his own time. Agreed opinion should not prevent him from examining an issue anew. The Hanbali School's following is about 5 millions, and has little hold on Muslims outside the Wahhadbis of Saudi Arabia (Ozigbo, 1988: 88 – 89).

No doubt a look at the above legal traditions reveals a manifold array of differences in recognition of the authenticity of sources, interpretation, and application. Hence, Islamic jurisprudence (*fiqh*) is by no means a monolith. Various schools of thought emerged as a result of differences in the interpretation of Islamic law and the recognition of the authenticity or otherwise of the individual sources of Sharia. Thus, the four traditional *(Sunni*) schools do not equally agree on which sources are to be taken as authentic. Ubaka (2000:17-18) succinctly delineates these differences. While "Hanafi stresses the importance of the Quran and Qiyas", "the Maliki is opposed to Qiyas but accepts the Quran, Sunna and Ijma as legitimate sources of Islamic law". Again, while the Shafii, liberal as it were, "makes use of all the four roots and tries to determine exactly their function in the interpretation of the law", the conservative Hanbali school, "adheres strictly to the letter of the Quran and the Sunna". Yet there are other schools of law that have been described as non-*sunni* (unorthodox) or outrightly 'heretical' by piety-minded Islamists. The most popular among these is the *Shi'ite* School which, though accepts the Quran and the Sunna as the primary sources of Islamic law still has its own criterion for the authenticity of the *Hadith* (document of the Sunna) (Ubaka, 2000:19). Besides the Shi'ites still practice *Ijtihad* (personal interpretation), which for the Sunni schools is no longer permissible since the 10th century AD (Ubaka, 2000:19).

It is however beyond the scope of this paper to go into the details of the similarities and peculiarities of each school. But it suffices to state that the basic areas of differences are either the differences in the traditions that each school has used the liberty of Qiyas in legislating (Byang, 1988:42). The sharia personal law that has been operating in Nigeria is the Maliki Law "which is opposed to Qiyas but stresses the Koran, Sunna and Ijima" (Ubaka, 2000:18).

The implication of the above scenarios is that Muslim laws are not uniform as there is more than one school of sharia. The four main Sunni schools that exist today were certainly formed through the personal allegiance of legal scholars or jurists to the founders. Imam (2003: n. p) observes that "each school had its own specific circumstance of origin". For instance, both Hanafis and Malikis are the representatives of the legal tradition of a particular geographical locality. While the former is operative in the present day Iraq, the later is the legal regime in the Arabian city of Medina. The two later schools, Hanafi and Shafii developed precisely out of a controversy in jurisprudence (human reasoning over law). Consequently, each school has varied according to the cultural, political and socio-economic contexts in which they were developed and the philosophy of reasoning that was accepted (Imam, 2003: n.p).

Besides, there can be wide diversities and differences among these schools of law. For instance, neither women nor men require marriage guardians in Hanafi law. This is different from what obtains in the Maliki School where fathers have the right to determine the husband

of their daughters. In Maliki law, women have a right to divorce on demand regardless of the husband's consent. This is not the case in other schools (Imam 2003: n. p). In fact, the Maliki School upholds rigidly the *patria potestas* of the husband as the head of the family by giving him right of control over his wife's property and over his adult sons and daughters. The Shafii tradition does not allow such powers to a husband and father though on the whole, is more pessimistic on women's rights. Also the Maliki School is more accommodating than the Shafii in its attitude to local customs (Ozigbo, 1988: 89). Further, it is only in the Maliki School that pregnancy outside marriage is accepted as evidence of unlawful sexual intercourse (*zina*). Again, while the majority of Muslim jurists accepts contraceptive use and abortion up to 40 days, a minority does not (Imam, 2003; n. p). Furthermore, even within a given school, there can be a lot of variations. For instance, not all Maliki adherents view pregnancy as sufficient evidence of zina. Divergences also exist with given school about, for instance, women's rights and capacity to act as witnesses, judges or leaders, with some accepting women's capacity in all three and others more restrictive. These and other diversities are surely not minor but have profound implications for human lives and voices.

All the above variations go to demonstrate the absence of any monolithic idea of law in Islam. Krawietz (2008: 38 – 39) succinctly underscores this:

> Islamic law is composed of thousands of variations and versions produced by individual scholars belonging to different schools, but all these writings were never compiled in a clear canon, nor was a precise hierarchy of authorities formulated, at least in Sunnite Islam. There has never been a monolithic block of Islamic law just as there is no "Islam as such". Specific versions were only "nailed down" under the influence of European powers, when Islamic law began to be codified (in part) in various Islamic countries in an analogy to the enacted law of the West.

This fluidity of Islamic law is further corroborated by Tellenbach (2008:116) who observes that "in Islam there is not really any supreme authority to decide definitely about the proper answer to a legal question" (cf also Ozigbo, 1988: 88: footnote 9). No wonder Fadl (2010: 135) notes that "Shariah encompasses a variety of schools of thought and approaches, all of which are equally valid and oxthodox".

The overriding consequence of the above discussion is that Muslim laws are not unchangeable. In fact, the scholars after whom the four Sunni schools were named had no intention of making their views final and binding on all Muslims. Hanbal urged "do not imitate me, or Malik, or al-Shafi, or al-Thwari and derive directly from where they themselves derived". Malik cautioned "I am but a human being. I may be wrong and I may be right. So first examine what I say. If it complies with the Book and the Sunnah, then you may accept it. But if it does not comply with them, then you should reject it". The effect is that in the views of these founders of Islamic jurisprudence, good Muslims are precisely those who question, examine and trust their own reasoning and beliefs. The scholars surely find it acceptable that the reasoning of one legal tradition might be considered correct on one issue, but that of another more correct on a different issue (Iman, 2003: n. p). After all, An-Naim (1990: xiv) notes that "shariah does not represent the whole of Islam, but rather an interpretation of its fundamental sources, which must be understood in their historical context". It may be germane to conclude this section with the observation of Onayekan (2001: 3) that sharia has both religious and political dimensions. He however notes that the controversy surrounding sharia is mainly because of its political dimension. Onayekan (2001:3) holds that "one area of major misunderstanding for most people is to imagine that the sharia is a given code of law". The fact,

according to him, is that "there is no such written code of law. Zamfara had to draft its own as others have done after it." It is precisely the reality of these historical and temporal vicissitudes that gives vent to the reformability and restructurability of sharia.

3. CONCLUSION

Given the enormity of human input in the formulation of sharia, the legal framework is not immune to reformation. The Islamic laws need some reforms to be in line with the modern societal needs. An Egyptian writer and Judge, Muhammed Saidel–Ashnawi had since 1978 advised his fellow Muslims on Sharia. He claims that Sharia is more a spirit than a letter, a programme of social change aimed at progress and liberation, not at preserving the *status-quo* (Adigwe, 2000:26). According to him, at the time of Prophet Muhammad, laws were made with regard to the circumstances of those times. Today, different circumstances call for different legislations. For instance, at the time of the prophet, people knew one another and could lend money and share benefits without interest. In today's anonymous world, interest is a new way of sharing the benefits and of compensating for inflation. It could be remembered that usury was formerly condemned by many religions including Christianity. But today's modern developments have made them to re-examine their stands.

Islam has always claimed that Sharia is a divine law and hence immutable. But the extent of this divine origin of Sharia has been an object of controversy among scholars. It does seem that apart from the injunctions of the Koran and the Sunna, all other laws and interpretations made by Muslim jurists can rightly be described as merely human. It is this that gives rise to different schools of Muslim jurisprudence. Therefore, if Sharia laws emanated from the social needs of the time, nothing prevents the modern day Islam from reinterpreting Islamic laws along democratic principles. It is either Islam does so or it faces the incident of being relegated as a religion of anachronisms. It is perhaps to avoid this that the Shi'ite sect still practices *ijithad* (personal reasoning) which was believed by Sunnic schools (traditional Islam) to have been closed since the 10th Century (Adigwe, 2000:26). It may then be necessary for Muslims to resurrect that legal flexibility rather than give blind obedience to an archaic law that seems to have today become inhuman.

In the same line with the need for legal reform, Islam must undergo a socio-religious rebirth. Religion is a social institution (Giddens: 1993:387). As such, it enhances the social life of the society that practices it. Therefore, Islamic religion must learn to co-exist with other religions. Christians and adherents of other religions must be allowed to practice their faith without hindrance. It is really unfortunate, according to Adigwe (2000:26), that "the early wars of expansion influenced the compilers of Sharia to make Islam into a religion of war." Muslims should therefore look openly to the experience of other religions and peoples for ways of being religious. This should be particularly so as religion and its laws are more a matter of morality and conscience rather than a thing of physical coercion.

Further, sharia Islam must also contend with the fact that theocracy that was possible at the time of Muhammad is no longer fashionable today. Such a direct government of *Allah* had long since given way for democracy and other forms of government to thrive. The secularity of most modern states makes it questionable and bizarre for Sharia to be implemented, run and serviced with state funds. The Muslim is free to have his Sharia but without involving the state and its machinery. It is not a question of Muslim majority or minority. It is rather a question of fundamental human rights of religious freedom and of justice. Moreover, it is usually claimed by Muslims that Sharia also governs their political life. But what if the political lives of adherents of other religions are equally governed by their respective religious laws, will there be peace? Certainly, there would be anarchy and chaos. Therefore, in multi-religious states, common sense demands that separation of religion and politics seems to be the reasonable safe ground.

Moreover, it is really regrettable that Islam had been propagated along with the Arab culture (Arabization) (Stamer, 1995:13). Hence, the culture of violence and private vengeance (tit-for-tat) which existed in pre-Islamic Arabia and the Middle East has survived in Islamic law almost without modification. The African traditional sense of brotherhood and accommodation was consequently eclipsed. It may therefore be necessary to in-culturate Islam, like in the days of the Ummayads (Nzomiwu, 1989:50), in such a way that by shedding the Arab garb, one can be authentically a national and authentically Muslim. This will result in a situation where care for others, solidarity, acceptance, dialogue and trust will reign supreme irrespective of adherence to Islam.

It is equally *apropos* that there exists a safe separation between the Islamic religion and ethnic cultures It is often observed that those who come from culture where Islam is deeply embedded are unaware of the distinction between Islam, its Sharia and the culture itself. They may believe that many traditional practices are part of Sharia. This is the case in many a Muslim enclave where even when the Sharia grants so many rights to women, women are still subjected to constant violation of their rights by a patriarchal culture and interpretation that regard them as inferior. A proper study need be carried out to sift the Islamic tenets from all too-patriarchal culture in order to enhance the respect for women's dignity.

Our discourse has also implicated the urgency of avoiding fundamentalism and literalism. Although fundamentalism is found among some members of many religions, Kukah (1993:216) holds that "recently it has become a suitable term for referring to those Muslims who preach that unless you are born again in the light of Quran, you risk perdition". Hence, according to this understanding, every aspect of national life is seen through the lenses of religion – government appointments, the civil service, applications of policy and so on. In the same way, Islamic literalism means following strictly the letters of the Koran which interpretations are often at variance with the practices of other religions. Therefore for democracy to survive anywhere, adherents of Islam need to read beyond the letters of the sharia and know that followers of other religions also have their laws.

In the light of the above discourse, religious fanaticism should also be avoided. The word "fanaticism" derives from the Latin *"fanaticus*" meaning an inspiration from a deity. A fanatic is therefore one who is inspired by a particular deity that targets excess. Chidili (1998:82) observes that all sheds of fanaticism share common characteristics. These include rigidity of beliefs and behaviours followed with the lack of openness to other possibilities, a sense of exclusiveness and absolutism, personal pride and antagonism or hostility towards alternate views or ways". While all religions, natural and revealed, have a share of the above attitudes, it still seems to be more prevalent in Islam and its sharia. Islam needs, therefore, to employ a little bit of rationality in its manner of operation to curb fanaticism.

The adherence to state secularity principle is quite normative. In line with modern and international best practices, no religion should be taken as an official religion of any state even though followers of a particular religion may well be in the majority. It is by this that state funding of Sharia courts, enforcement of sharia laws with state machinery, undue subsidy for *hajj* and other pilgrimages, inclusion of sharia in constitutions, and so on are derogations from the idea of state secularity. Therefore, for the promotion of peaceful co-existence, there is an urgent need for government to maintain a neutral posture with regard to all religions. This should not be construed to mean that government should not be concerned at all with religion. It rather means that it should not give any impression of giving preference to a particular religion. Allied to this is the awareness of religious pluralism and respect for religious freedom.

Although ideally, it still remains an important verse in the Islamic Koran that; "there is no compulsion in religion", yet what is obtainable in practice leaves much to be desired. Killings are done in the name of *Allah* and conversion from Islam punished with death. Therefore, for healthy living, Islam and its Shariah should be aware of the multi-religiosity and pluralism of today's world (Odey, 2000:45) and consequently respect the fundamental right to

religious freedom of other believers. It may well be appropriate to often organize inter-religious dialogues. Such dialogues are not necessarily aimed at converting anybody from his or her religion. They are rather organized in view of exploring avenues for joint national development and for peaceful co-existence among adherents of different religions. Inter-religious dialogue, therefore, constitutes a challenge to both religious and government leaderships that are expected to develop the redemptive vision and mission of religion" (Chiegboka, 2004: 139).

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