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TAKING AN ISLAMIC LAW COURSE IN FACULTIES OF LAW IN NIGERIAN UNIVERSITIES BY NON-MUSLIMS: A BREACH OF FUNDAMENTAL RIGHT, HOW RIGHT?

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ABSTRACT

There are 43 federally owned universities in Nigeria which are established by an Act of the National Assembly. The National Assembly powers to establish these universities are derived from the Constitution of the Federal Republic of Nigeria, 1999 (as amended)². It is the National Universities Commission that is statutorily mandated to advise the President on the general program to be pursued by the universities in order to ensure that the universities are fully adequate to meet the national needs and objectives³. By the provision of the National Universities Commission Act, there is a mandatory membership for a Law representative⁴. This points to the veracity that Law is one of the most imperative courses to be offered or better still, that is offered by federal universities in Nigeria. No problem lies in the establishment of Faculties of Law in Nigerian universities as the primary responsibility of the Council of Legal Education⁵ is to ensure that a law graduate aspiring to be a lawyer has undertaken appropriate training to know and access the operation, efficiency, sources and relevancy of various laws in the Nigerian society before being called to the Bar⁶. However, the problem arises when a Faculty of Law in a Nigerian university seemingly mandates a non-Muslim to take a course in Islamic Law⁷.

Keywords: Islamic Law, Fundamental Right, Non-Muslim, Legal Profession and Practice, Secularism and Legal Pluralism.

1. INTRODUCTION

Islamic Law is a body of personal laws applicable to the community of Muslims not only in Nigeria but also, the world over. It is sometimes referred to as "Moslem laws." *Shari'ah* on the other hand, means literally the way to a watering-place. Technically, it is the path that does not

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² Section 4(2) and (3) of the Constitution of Federal Republic of Nigeria. See also, Item 27 of the Concurrent Legislative List, Part II, Second Schedule to the Constitution. Section 18(1) and (3)(c) of the Constitution of Federal Republic of Nigeria, 1999 as altered.

³ See section 4(1)(b)(i) of National Universities Commission Act.

⁴ Section 2(1)(d)(viii) of National Universities Commission Act.

⁵ Section 1(1)(2) of Legal Education (Consolidation, Etc) Act Cap L.10 2004. See also *Okonjo v Council of Legal Education* (1979)1 FNLR 70.

⁶ Section 4(2) of Legal Practitioners Act

⁷ For examples, University of Ilorin, Ilorin, Kwara State, Usman Danfodio University Sokoto, Bayero University Kano; inter alia.

only lead to Allah⁸, the Most High, but also to the path believed by Muslims to be the path shown by Allah, the Creator Himself through His Messenger, Prophet Muhammad.⁹ Thus, Shari'ah is believed by Muslims to be the canon law of Islam and all different commandments of Allah to mankind. Shari'ah is undoubtedly the most controversial matter in Nigeria today¹⁰. This is due in particular to the adoption of Shari'ah as the personal law of Muslims in Nigeria, a country that takes pride in its secularism. The Shari'ah controversy also finds its way to the legal atmosphere as it becomes a discourse in some faculties of Law in Nigerian universities in which law undergraduates irrespective of their religions are made to take a course in Islamic Law. There arise a plethora of vexing questions as to why are non-Muslims students compelled to take a course in Islamic Law? Is that not an attempt to strategically indoctrinate the non-Muslim students into the tenets of Islam? Why should there be a court which applies one religious law when there are other religions in the country? This is an attempt to engage in factual, historical and legal analysis of the actual contents of Islamic law courses offered in faculties of Law in some Nigerian universities and provide unbiased answers to the questions raised in this introduction as well as examine the constitutionality or otherwise of making non-Muslim law students take a course in Islamic law.

PRELIMINARY ISSUES

When the colonial system was firmly entrenched by the hegemonic British administrators in Nigeria in the 17th century, they initiated a policy known as Indirect Rule in which the indigenous traditional leaders were made to indirectly govern their people in the traditional way. Preceding this period, Islamic law was already firmly established in the system of public administration and adjudication and not merely a personal affair of the people in Northern Nigeria¹¹. There was an effective and efficient working court system in the North administered by Alkalis while the Emir served as the ultimate judge and presided over matters that were of public interest. Emir also served as an appellate court to the other native courts in Northern Nigeria.¹² Islam was the state religion as at that time and Shari'ah was the official legal system in the North.¹³

⁸ SuratulJathiya verse 18, Allah says: "Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know."

⁹ AbdurRahmon I. Doi, "Shari'ah: The Islamic Law" p. 1

¹⁰ Oba A. A., "Lawyers, Legal Education and the Shari'ah Courts in Nigeria"

¹¹ This is not to say that Islamic law was foreign in Western Nigeria. From 1808 to the mid-1830, the Caliphate in the North extended to the West and key parts of Yorubaland. It is on record that Oba MomoduLamaye of Iwo land who died in 1906 was reported as administering Islamic law. In the same vein, Oba AliyuOyewole, the 7th Akirun of Ikirun town in Osun State reportedly ensured that a Shari'ah court was opened in Ikirun in 1910. However, the administration of Islamic law was not a public affair as it was in the Northern Nigeria as at that time.

¹² History and Development of Judiciary in Kwara State (c) (1960-2020), A Publication in Honour of Late Hon Justice SaiduKawa, The Pioneer Chief Judge Kwara State" Historical Development of Judiciary in Nigeria, Chap 2, p 27.(year)

¹³ Ibid.

The colonial masters did not want to unsettle the system of Islamic adjudication which was in place during that period so they let it thrive. Thus, when the Criminal Code was enacted to the Northern Nigeria in 1904, Islamic adjudicatory system manned by Qadi¹⁴ (judge) existed side-by-side with the English adjudicatory system.¹⁵ Section 4 of Criminal Code Ordinance affirmed this thus:

"No person shall be liable to be tried or punished in any court in Nigeria, *other than a native tribunal*, for an offence except under the express provisions of the Code or some other Ordinance, or some law, or of some Order-in-Council made by His Majesty for Nigeria or under the express provisions of some statute of the Imperial Parliament which is in force in, or forms part of Nigeria."

The "native tribunal" as used in this provision included the Islamic adjudicatory body. Long before this time, the native courts had power to adjudicate on Islamic criminal laws and impose penalty on offences under Islamic law. This traditional court system remained until around 1864 when the native courts which preceded the present-day Sharia Court, Area Court, and Customary Court were modified and conferred the authority to administer and dispense justice. After 1864, the native courts still had power to initiate a system of taxation, penal law, civil law and sentencing policies.¹⁶

However, problems started ensuing where there existed some conflicts between the Islamic Law principles of the School of Imam Malik which was applicable in Northern Nigeria and the Criminal Code¹⁷. Thereafter, there was a 1933 amendment to the above provision wherein "native tribunal" as used in the Ordinance was totally swept under the carpet and there were different attempts of courts to interpret the amendment.¹⁸

¹⁴ The Constitution makes use of the expression "Kadi", it should be noted that the appropriate transliteration of the Arabic word *قاضي* is "Qāḍī" and not "Kadi".

¹⁵ Kharisa Sufiyan Chukkol, "Law of Crimes in Nigeria" p 15.

¹⁶ Ibid pg 28

¹⁷ In *Guri v Hadejia Native Authority* (1959) 4 FSC 44, the Federal Supreme Court held that a rule of Maliki law (an Islamic law principle) which prohibited an accused person who is standing trial for highway robbery from defending himself, was declared null and void and was set aside as repugnant to the sense of natural justice, equity and good conscience of the colonial masters; *Yinusa v Adesubukan* (1970) NNLR, 77.

¹⁸ In *Gubba v Gwandu Native Authority* (1947) 12 WACA 14, the West African Court of Appeal held in interpreting that provision that: where a native court tried an offence which was an offence only against native law and custom (Islamic Law), then it could try it in accordance with native law and custom, and could inflict the customary penalty, subject to the usual provisos. But, if the offence is under the Criminal Code then, the offence must only be tried under the provisions of the Criminal Code. However, in *Maizabo v Sokoto Native Authority* (1957), NNLR 133, it was held that the correct construction to be given to the provision was that, native or customary courts were empowered to apply customary criminal law, even if there was a

In essence, there were native courts vested with the power to hear and determine Islamic law matters. What seems to compound the issue was the provision of section 2 of Native Courts Ordinance of 1914 which declared that "native laws and customs include Islamic law"¹⁹. This was further complicated when section 13 of Supreme Court Proclamation, 1914, subjected the different principles of Islamic law to repugnance test. For want of clarity, any native law including Islamic law which was contrary to the British sense of natural justice, equity and good conscience was rendered null and void.²⁰

What is not far from veracity is that, before the advent of the colonial masters, there were religious, royal and traditional community-oriented ways of settling disputes in the Northern Nigeria. Thus, Islamic law was not only a law but also a complete way of life of the people especially in the Northern Nigeria; the laws are contained in Qur'an, a unique Book which is different from a mere code of conduct and supplemented by the Sunnah of Prophet Muhammad (Peace be unto him).

On the strength of this perception, the British administrators decided to provide and recognize this law just as they had recognized native and traditional practices in the Eastern and Western Nigeria²¹. This recognition did not end with the British administration, it continued and succeeded till the time Nigeria gained Independence on the 1st of October, 1960.

Section 112 (1)(c) of 1960 Constitution provided that Appeal from the decisions of Shari'ah Court²² or the interpretation of native laws (Islamic laws) applicable in the Northern Nigeria shall lie to the Federal Supreme Court. The implication of this is that the 1960 Constitution also recognized the Shari'ah Court in which Moslem laws which were popular among the regional people in the Northern Nigeria were adjudicated upon. The subsequent Republican Constitution of 1963 also in section 119 replicated the above stated provisions of section 112 of the 1960 Constitution *mutatis mutandis*.

The provisions of 1979 Constitution were very clear as they did not only establish the Shari'ah Court of Appeal but they also confer jurisdiction to hear and determine Islamic personal matters on Shari'ah Court of Appeal. Section 240 of the 1979 Constitution provides that "There shall be for any State that requires it a Sharia Court of Appeal for that State", while section 242 of 1979 Constitution confers jurisdiction to hear and determine Islamic personal matters on the Shari'ah

provision in the Criminal Code on the subject. But they must not pass a sentence in excess of the maximum that could have been imposed if the case had been tried under the Criminal Code.

¹⁹Smith, David Nathan. "Native courts of Northern Nigeria: Techniques for Institutional Development." (1968). Boston University Law Review, Collection of School of Law, 48 (1) (1968): 49-82.

²⁰Guri v Hadejia Native Authority (1959) 4 FSC 44, Aoko v Fagbemi, Rudolph Peters, Chapter 33 Shari'a and 'Natural Justice' The Implementation of Islamic Criminal Law in British India and Colonial Nigeria.

²¹GaniFawehinmi, "Courts' System in Nigeria, A Guide" Chapter 2, Summary of Courts Structure, (1992): 84-90

²²Subsection 5 of section 112 of 1960 Constitution defines "the Sharia Court of Appeal" as the Sharia Court of Appeal established by the Sharia Court of Appeal Law, 1960, of Northern Nigeria, as amended, or any law replacing that law.

Court of Appeal. More importantly, Appeals arising from the decisions of Shari'ah Court of Appeal shall lie to the Federal Court of Appeal.²³ It should be noted that the term 'Moslem law' in the earlier constitutions was changed to 'Islamic Personal Law' in 1979 Constitution and the jurisdictions of the Shari'ah Court of Appeal were restricted to questions relating to Muslim personal matters as those comprising questions of marriage in accordance with that law and its dissolution, family relations, guardianship, gift, succession, wakf, etc., where the parties are Muslims.

The constitutional reference to Islamic law and Shari'ah Court of Appeal is also made by Chapter VII, Parts I and II of the current 1999 Constitution²⁴. This Chapter is titled 'The Judicature' and it provides that there shall be a Shariah Court of Appeal for the Federal Capital Territory, Abuja.²⁵ While the establishment of Shari'ah Court of Appeal for Federal Capital Territory is mandatory, Shari'ah Court of Appeal of a State is only for the State that requires it.²⁶ The jurisdiction of the Shariah Court of Appeal established for the Federal Capital Territory, Abuja and of a State are the same as it extends to any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant.²⁷ It does not extend to Islamic criminal law.²⁸

On the basis of the foregoing analytical narratives, it is submitted that it is not the religious advocacy of the adherents of Islamic faith that later made Islamic personal law and Shari'ah Court of Appeal find their way to the different Constitutions of Nigeria rather, it was in a bid to recognize and provide for what the colonial masters thought to be the customary practice of the people in Northern Nigeria, failure of which, in our view, would make it impossible to appreciate the heterogeneous or secular nature of Nigeria.

Thus, the question is not: why should Islamic personal law and Shari'ah Court of Appeal be in the Constitution of Federal Republic of Nigeria? But rather, why should they be omitted from the Constitution? The inclusion of Shari'ah Court of Appeal and Islamic personal law in the Constitution is not unconstitutional nor anti-religious. To hold otherwise would mean that the religion consciousness of some adherents could deter others from exhibiting their religion, custom and tradition²⁹. In Nigeria, the population of the adherents who have taken Islamic legal system as their personal law is fairly high as such, it is natural that these people have a court

²³ Section 223 of the 1979 Constitution of the Federal Republic of Nigeria.

²⁴ See also, section 6(3) and (5)e and f of the Constitution of Federal Republic of Nigeria which makes both Sharia Court of Appeal, FCT, Abuja and Shari'ah Court of Appeal of a State superior courts of records.

²⁵ Section 260 of Constitution of Federal Republic of Nigeria.

²⁶ Section 275 of Constitution of Federal Republic of Nigeria.

²⁷ See Sections 262 and 277 of the Constitution of Federal Republic of Nigeria.

²⁸ See *Allaji Aminullaharuna & Anor v Umar Suleiman & AG of ZAMFARA State* (2014) 2 SQLR (PT IV) 521-542 @ 537 para A, *Allaji Abdu Mai-Daura v Garba Bagobin Tudun-iya* (2013) SQLR (PT IV) pg 87-88 C-B.

²⁹ *Salazar v Duomo* 559 U.S. 700.

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²⁹ *Salazar v Buono* 559 U.S. 700.

system that adjudicates on their matters.³⁰ To borrow from the words of Chukkol "nowhere in history were the majority required to forfeit their law because of a minority living in their midst."³¹ Since Common Law is largely influenced by the church and Christianity Law,³² applicable to the Christian faithfuls in Nigeria while Customary Law covers every indigenous religion of the people of Nigeria, both of which are provided for in the 1999 Constitution. It is quite reasonably fair and just to have Islamic law determine the fate of the adherents of Islam in Nigeria afterall, it is the personal law of the Muslims.³³

ISLAMIC LAW AS A CUSTOM OF THE PEOPLE IN THE NORTH

One major characteristic of Islamic law is that it takes away the customs of its adherents and substitutes it with the traditions and practices which are firmly entrenched in Qur'an and Sunnah. Little wonder, the identity of the people in Northern Nigeria is rooted in the Islamic religion. Invariably, it becomes impossible to distinguish religious and customary aspects of Islam as both are fused. This fusion, in our considered view, is what made the colonial masters enact and provide in section 2 of Native Court Ordinance, 1914, that "native law and custom includes Islamic law."

It should be noted that the above position of law has been criticized and rendered inconceivable by the courts, for, the court in *Usman v. Umaru, Per Bello, CJN* (As he then was) drew the clear discrepancy between Islamic law and customary law thus:

"Furthermore, to my mind, the definition of 'customary Law' in section 2 of the Customary Court of Appeal Law which means 'the rule of conduct.... as established by custom and usage is incapable of including 'Moslem Law'. Since the decision in *Lewis v Bankole*.... customary law has been stated to be unwritten customary law recognized as law by members of an ethnic group and it is 'a morrow of accepted usage... On the other hand, it is notorious fact that Moslem law is written in the holy Koran, in numerous books of Hadith..."³⁴

³⁰ Out of the 36 States in Nigeria, there are 19 Northern states in the country wherein the majority of the people in these States are adherents to Islamic faith.

³¹ KharisuSufiyanChukkol, "The Law of Crimes in Nigeria, (Ahmadu Bello University Press Ltd: Zaria, 2010): 22.

³² It should be noted that the Common Law principles that are largely applicable in Nigeria are essentially influenced by Christianity and the church. See Augusto Zimmerman, "Christianity and Common Law: Rediscovering the Christian roots of English Legal System".

³³ Section 262 and 277 of Constitution of Federal Republic of Nigeria; A. A. Oba, Islamic Law as Customary Law: The Changing Perspective in Nigeria International Comparative Law Quarterly, Vol. 51, 2002, pp. 817-850.

³⁴ (1992) 7 NWLR (Pt.254) 277. See also, *AlhIlaakamawa v. Alh Hassan Bello & Anor* (1998) 8 NWLR (PT. 561) 173, Wali, JSC also stated that Islamic law is not the same as customary law. It does not belong to any particular tribe, it is more rigid and universal than English law. Section 29(4) of the Kano State Sharia Penal Code Law, 2000 provides that "the provisions of existy laws in the state which define customary law to include Islamic law, or Moslem law are hereby accordingly amended and such provisions shall be deemed statutory laws wherever they occur."

The mistaken belief that Islamic law is a customary law makes some students of law and some practitioners in the legal profession hold the misconception that Sharia'ah Court of Appeal or any native court administering Islamic law is a religious court. Both notions that Islamic law is a customary law and Sharia courts are religious court are wrong.

Islamic Law is Different from Customary Law

Let us start with the notion that Islamic Law is a customary law and set the records substantially straight. Firstly, Customary Law originates from the long practice of the people³⁵ while Islamic law originates from Allah, the Lord of the Universe.³⁶ Secondly, customary law applies to a particular group of people, that is, each community has its own custom which is applicable only in that district and distinct from other communities³⁷. On the contrary, Islamic law is universal in its application.³⁸ Thirdly, customary law is flexible³⁹ because it modifies itself to accord with changing social conditions. However Islamic law is not flexible as the main source already declares that no addition or subtraction is required.⁴⁰ It must be stated however that Islamic law is relative for elasticity because it allows *Mujtahid* (jurisconsult) to use reasoning based on the sources of Islamic law in extending the existing rules to emerging issues. Fourthly, Customary law also has the characteristic that it is largely unwritten, however, Islamic law principles are contained in Qur'an which is also known as *Al-kitab* (the Book).⁴¹ From these distinctions, it is clear that Islamic Law and Customary Law are not one and the same.

Shari'ah Courts as Religious Courts

We then move on to the issue of the Shari'ah Court being a religious court. Theoretically, Shari'ah Court and its variants are not religious courts. As shown from the historical narratives for the establishment of the native courts of which Shari'ah Court, Area Court and Shari'ah Court of Appeal succeeded. The innocent but fraudulent intention of the colonial masters was to retain an indigenous court system recognized by the native people in the different regions and what the British colonial masters considered to be relatively customary in the North was the Islamic law and Shari'ah Court system. Therefore, they modified the Shariah Court system and Islamic law in a very unspeakable loose way so as to conform to the English style of court system.⁴² Worse still;

³⁵ *Alfa v Arepo* (1963) WNLR 95 at 97, Section 258 of Evidence Act, 2011.

³⁶ *Suratul Al-Araf* verse 3, *Suratul Yusuf* verse 2, *Suratul Taha* verse 2, *Suratul Fussilat* verse 3.

³⁷ *Owonyi v Omotosho* (1961) All NLR 304.

³⁸ *Suratul Anbiyah* verse 107.

³⁹ *Kimdey & Ors v Military Governor of Gongola State* (1988) 2 NWLR (Pt.77) 445, *Lewis v Bankole* (1908) 1 NWLR 81.

⁴⁰ *Suratul Maidah* verse 3, Allah says: "This day I have perfected for you your religion and completed My favour upon you and approved for you Islam as a religion."

⁴¹ *Suratul Al-Araf* verse 2, *Suratul Fussilat* verse 3, *Suratul Baqora* verse 2.

⁴² Mwinyi T Haji and Abdulfatai O. Sambo, "The Influence of Common Law Advocates and Judges in the Shari'ah Adjudication: A Critical Exposition of the Experience in Nigeria and Zanzibar" (2012): 6; Section 13(d) of Shari'ah Court of Appeal Kwara State mandates the court to apply the principles of natural justice, equity and good conscience as understood and applied by the English courts and not enjoined by Qur'an and Sunnah of the Prophet (Peace Be unto him).

they even made the different English styled courts to sit as appellate courts on the decisions of the Shari'ah Court.⁴³

More objectionably, Shari'ah Court is far from being a religious court because the religion the court is presumably applying its rules and principles is Islam. However, the principles of Islamic law adopted and applied are totally and diametrically different from the orthodox methods and procedures of Islam as a religion.⁴⁴ By way of illustrations, the punishment for theft in Islam as a religion is amputation of a hand⁴⁵. However the punishment for theft under the Penal Code which is allegedly a modest model of Islamic law principles applicable to the people in the North is imprisonment for five years or fine or both⁴⁶. Similarly, the punishment for highway robbery (*hirabah*) under Islam is death by crucifixion provided a victim is killed and property taken⁴⁷ while under the Penal Code the punishment is an imprisonment for life or a less term and shall also be liable to fine.⁴⁸ Fornication is punished by 100 lashes under Islam,⁴⁹ while it is an imprisonment for two years or with fine or both under the Penal Code. So, these few distinctions show sufficiently that Islamic laws in the real sense of Islamic laws as stipulated in Qur'an and Sunnah are not what the supposed Shari'ah Courts apply⁵⁰.

More importantly, Shari'ah Court is not even a competent court to try criminal offences as its jurisdiction does not extend to criminal matters, were it to be a religious court as claimed, the Shari'ah Court would be very competent to hear and determine criminal matters and have the power to impose punishment under "Islamic religious law".

A BREACH OF FUNDAMENTAL RIGHT, HOW RIGHT?

Having established that the existence of Shari'ah Court and Islamic personal law in the Constitution is an effort to recognize a supposed customary practice and/or means of adjudication of the people in the Northern Nigeria, and allayed the perplexity that Shari'ah Court is a religious court with different illustrations of what Islamic law dictates and what the courts that apply Islamic laws do, we therefore turn to the issue of Fundamental right particularly Right to Freedom of thought, conscience and religion.

⁴³ *Native Authority v Fagaji* (1957) NRNL 57, *Tsamiya v Bauchi Native Authority* (1957) NRNL 73. *Oba AA* people not learned in Sharia.

⁴⁴ *Kharisa Sufiyan Chukkol*, *Ibid*, 15-16.

⁴⁵ In *Suratul Maida* verse 38, "As for the thief, the male and the female, amputate their hands in recompense for what they earned [i.e., committed] as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise."

⁴⁶ Section 287 of Penal Code

⁴⁷ *Suratul Maida* verse 33.

⁴⁸ Section 298 of Penal Code.

⁴⁹ *Suratul Nur* verse 2

⁵⁰ Yaguda articulates this objection thus: The Islamic law, as other customary laws in the country, exists as an appendage of the English common law. It does not exist as an autonomous and self-regulating legal system. It is defined in terms of the common law. It applies subject to the standard of the common law. Its courts are established and its personnel trained and appointed in the same way and using virtually the same criteria as those of the common law courts and justice (Yaguda, 1988).

Fundamental rights are set of privileges derived from natural and fundamental law enjoyed by virtue of being a human, the violation of which is considered to be a wrong⁵¹. It has usually been argued that the religious right of non-Muslim students studying Law in Faculties of Law in Nigerian universities is, has or likely to be violated by making them to take a course in Islamic Law⁵². But, how exactly right is this supposition?

Section 38(1) and (2) of Constitution of Federal Republic of Nigeria provides that:

"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

No person attending any place of education *shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.*"

The court in *Abdulkareem v Lagos State Government*⁵³ held interpreting this provision that:

"Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to freedom of thought, conscience and religion. By virtue of the provision, every person has the basic right to believe what he chooses to worship, whom he pleases and how he pleases. Under the provision, a person's freedom to manifest his religion is not only exercisable in community with others, in public and within the circle of those whose faith he shares, but can also be asserted alone or in private. Further, it includes in principle the right to convince others about the person's religion through preaching and propagation of religious ideas. However, the freedom does not entitle a person to impugn on the rights of others, or put the welfare of the society or public health in jeopardy."

Truly, some of the law undergraduates that are meant to take a course in Islamic Law are not Muslims and their parents are not adherents of Islamic faith. However, to our mind, what this

⁵¹ Black's Law Dictionary, tenth Ed p 744 and 1436. In *Ransome-Kuti v. Attorney-General of the Federation* (1985) 2 NWLR (Pt. 6) 211 at 230, Eso, JSC stated that a fundamental right "is a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself" and "it is a primary condition to civilized existence". Fundamental rights are rights derived from natural or fundamental law.

⁵²Section 46(1) of Constitution of Federal Republic of Nigeria. See also *Dilly v. Inspector General of Police and Others* (CA/L/12/2013)[2016] NGCA 21 (22 JUNE 2016) (CA/L/12/2013) [2016] NGCA 21 (21 JUNE 2016);

⁵³*Abdulkareem v Lagos State Government* (2016)15 NWLR (PT 1535) 177. See also the unreported case of *Salisu Bashirat v The Provost, Kwara State College of Education*.

provision is saying is that every person and in this case, non-Muslim law undergraduates have the right not to be taught the teachings of a religion different from their religion.⁵⁴

We make bold to say that what the different Faculties of Law are teaching is not the core fundamentals of Islam such as: Oneness of Allah, truism of the messengership of Muhammad, observing of Solah, et cetera, rather, the knowledge that is being passed to the non-Muslim undergraduates is in relation to the sources of Islamic Law viz: Qur'an, Sunnah/Hadith, Ijma' and Qiyas⁵⁵. Since Islamic law forms part of the Nigerian legal system, it logically follows that, legal practitioners and primarily, students of law are expected to know and learn the application of this law since it forms part of the Nigerian legal system.⁵⁶

The point being made is that, taking an Islamic law course in Faculties of Law in Nigerian universities does not conflict with the above provisions of the Constitution nor the religious right of the non-Muslim law undergraduates nor does it affect the secularism of the country. It should be stated that teaching Islamic law is different from teaching Islamic religion⁵⁷. This is why it is possible to see some non-Muslims teach Islamic law. In fact, omitting to teach law undergraduates Islamic law will be unconstitutional because certain clear provisions of the Constitution will be left undiscussed.⁵⁸ After all, the non-Muslim students will be learning Islamic laws as a conceivable customary law of the people in the North not studying the pristine teachings and doctrines of Islam as a religion.

Below are five genuine reasons, this paper strongly believes, taking a course under Islamic Law is not a breach of fundamental right of the non-Muslims studying Law.

(a) The Provisions of the Constitution Cannot Be Unconstitutional

It must be pointed out here that when a provision finds its way into the Constitution, it is legal immaturity to claim such a provision is unconstitutional. Put in another context, a provision of the Constitution cannot be unconstitutional. Islamic personal law and Shari'ah Courts are recognized by the Constitution of Federal Republic of Nigeria under Chapter VII of the Constitution.⁵⁹ It will be academically incompetent for anyone to claim he has an extensive work on "Judicature" under the 1999 Constitution without discussing the establishment, appointment, jurisdiction, constitution, practice and procedure of Shari'ah Court of Appeal for both Federal Capital Territory, Abuja and State that desires it, on the ground that he is not a Muslim. The

⁵⁴ Section 10 of the Constitution declares on the secular nature of Nigeria thus: "The Government of Federation or of a State shall not adopt any religion as State Religion."

⁵⁵ Abdal RahmanDol, *Ibid*.

⁵⁶ Niki Tobí, "Sources of Nigerian Law," (J): 133-132.

⁵⁷ Shari'ah courts do not make the crucial and necessary distinction between Arabists (who have studied Arabic), Islamists (who have engaged in Islamic Studies) and Shari'ah practitioners (who have studied Shari'ah) (Ambali, 1998, Ajetunmbola, 1988). In North Africa and the Middle East this distinction is widely known and jealously guarded.

⁵⁸ S. 6(3)(f)(g), S. 260-264, 275-279, 288 of the 1999 Constitution of Federal Republic of Nigeria, (as amended).

⁵⁹ *Ibid*

same will be said about a Muslim who for his love for Islam while discussing "Judicature" under the 1999 Constitution decides to omit a discussion on Customary Court of Appeal.

As rightly held by the US Supreme Court in *Salazar v Buono*⁶⁰ on the issue of whether the display of a religious symbol, the Mojave Memorial Cross, a Latin cross which was placed atop a prominent rock (outcropping by the Veterans of Foreign Wars Foundation in 1934 to honor war dead), is legal. The Apex Court in US ruled that the cross may stay and its staying is not offensive nor unconstitutional and what may be anti-religious and unconstitutional is the removal of the cross. Analogically, Islamic personal law and Shari'ah Court are like a cross in the Constitution, an attempt not to learn or teach them to non-Muslim law students in Nigeria especially in the discussion of jurisdictions of court is to say the least, unconstitutional and anti-religious, incomplete legal studying and learning.

(b) Legal Pluralism

Nigeria is undoubtedly legally pluralistic⁶¹ consisting of Common Law which includes doctrines of Equity and Statute of General Application,⁶² Islamic Law and Customary Law.⁶³ All these different laws are to be studied by prospective legal practitioners not because whether Muslims or not because they have interest in them but the legal profession expects them to have a fairly working knowledge of these areas of laws as they all form part of the social, economic, political, historical and religious sources of the country laws. Since Islamic law forms part of the sources of Nigerian Legal System, it becomes imperative for every law student to have a fair knowledge of Islamic law.⁶⁴

(c) Duty on a Legal Practitioner

The religion that a legal practitioner practises would not even matter when he is to defend a client especially a Muslim client in a court of justice⁶⁵ part of which is Shari'ah Court. There is really nothing preventing a non-Muslim appearing in Shari'ah Court of Appeal⁶⁶ except of course the requisite knowledge of Islamic law. In the support of this, the court has held that the provision of section 28 of Area Court Edict which purports to prevent a legal practitioner

⁶⁰ Ibid

⁶¹ I. O. Agbede, "Legal Pluralism: The Symbiosis of Imported, Customary and Religious Laws: Problems and Prospects," In M. A. Ajomo (ed.), *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989) 225 at 236 - 241.

⁶² Section 32 (1) of Interpretation Act

⁶³ A. A. Oba, "The Future of Customary Law in Africa," In Jeanmarie Fenrich, Paolo Galizzi, and Tracy Higgins (eds.) *The Future of African Customary Law*, (Cambridge University Press: Cambridge, 2011): 58-80.

⁶⁴ Obilade, "Nigerian Legal System"

⁶⁵ By Rules 14-17 of Rules of Professional Code for Legal Practitioner 2007, a lawyer is dutybound the duty to devote his attention, energy and expertise to the service of his client notwithstanding that his client is practicing a religion different from his religion.

⁶⁶ Yusuf Ismail Danjuma, "Legal Representation in Islamic Law," *An Essays in Honour of Mr Femi Falana*, 22ed., vol. 22 (2017): 392-407.

appearing before Area Court is contrary to section 36(6)(c) of the Constitution.⁶⁷ Thus, before a legal practitioner appears in a court, he must be properly armed with applicable laws in that court. It is on record that in Shari'ah Court of Appeal of Kwara State, non-Muslims appear as counsel. For instance, Meses JiyaDangana appeared for the Applicant in *AttairuGibadagin v. ZainabuManko* (Suit No. KWS/SCA/V/M/IL/12a/2010). Ayodele John appeared for the Appellant in *AtandaTaiye v. KuburatuTaiye* (Suit No: KWS/SCA/CV/M/IL/15/2010). Joseph Oboite is a Shariah Court-going legal practitioner in Kwara State.⁶⁸ It may not be fairly easy for these legal practitioners to appear in Shari'ah Court were they not trained in the areas of Islamic law.⁶⁹

(d) Right of Audience

If a non-Muslim law student decides not to be educated on Islamic law which is applicable in Shari'ah Court on the ground of his religion, it then follows that he has waived his right of audience before the Shari'ah Court when he eventually becomes a legal practitioner notwithstanding the provisions of the Constitution.⁷⁰ It will be a grave professional misconduct to allow a non-Muslim who is not educated in Islamic law to appear for a party in Shari'ah Court not because he is a non-Muslim but because the law imposes a duty on him. By Rule 16 of Rules of Professional Conduct for Legal Practitioners 2007, a legal practitioner is not expected to handle a legal matter which he knows or ought to know that he is not competent to handle. So, in order to avoid being prevented from appearing before Shari'ah Court on the ground of lack of requisite knowledge which may amount to professional misconduct, it is necessary for non-Muslim law student to learn Islamic law.

(e) The Main Contents of the Islamic Law course

The main contents of the Islamic law course offered in these Faculties of Law are not communicated in Arabic language which is even the language of Qur'an and Sunnah⁷¹. Put in another context, the language of instructions is English language wherein most Arabic words are transliterated and translated to the students. Even so, the core Islamic law contents are not deeply taught. Thus, sources of Islamic law, features of Islamic law, legal maxims in Islamic law, the objectives of legislation in Islamic law, the duties of the judge in Islamic law, jurisprudence of

⁶⁷ *KarimatuYakubu&Anor v. AlbajiYakubuPaiko&Anor*, Sharia Law Reports of Nigeria, Vol. 1 (1961-1989): 126-141; Abdulmumini A. Oba, 'Neither Fish Nor Fowl': Area Courts in the Iorin Emirate in Northern Nigeria, *The Journal of Legal Pluralism and Unofficial Law*, (2008): 40:58 at 66-92.

⁶⁸ Yusuf Ismail Danjuma, 'The Office Qadi (Judge) and the Nigerian Legal System: A Critique,' *Essays in Honour of Prof. David Olatokunbo Shittu Noibi*, 7, (2016-2018): 244-269.

⁶⁹ Legal Practitioners from both LL.B. Civil Law and LL.B. Combined Law programs are appointed in many states as Area Court judges. The Constitutional qualification for appointment as Khadi of the Sharia Court of Appeal allows common law practitioners to be appointed: s. 276(3) (a), 1999 Constitution.

⁷⁰ Section 36(6)(c) and 42 of Constitution of Federal Republic of Nigeria.

⁷¹ *SuratulFussilat* verse 3.

Islamic law, the status and extent of Islamic law application in Nigeria, the procedural and practice of the Shari'ah Court, are more or less what the non-Muslim students are taught in school. Most of the times, the non-Muslim students who do not allow to be driven by sentiments perform excellently well and go home with good grades as such, if a non-Muslim law student does not perform excellently in the course, it does not logically follow to say that it is because of his non-adherence for, in the first place, adherence to Islam is not a requisite of studying Islamic law.

(f) An Attempt to Indoctrinate

The element of academic force or compulsion to study an Islamic law course in some faculties of law in federal universities should not be seen as a strategic plan to indoctrinate the non-Muslims into the fold of Islam. It may be argued that how could a lecturer teach a course in Islamic Law without passing the teachings of the religion to the students. We humbly submit that it is very possible because if not, there would not have been different non-Muslims who teach Islamic law without changing their religion.⁷² Besides, there is a clear provision of the Qur'an that no compulsion in Islam.⁷³ Finally, a lecturer who is competently qualified will definitely know that his is to teach Islamic Law and not Islamic Religion. If truly he understands the Islamic religion, he will appreciate the fact that there is no compulsion in religion.

CONCLUSION

This article discusses the historical antecedent of the existence of Islamic personal law and Shari'ah Court in the past and current Constitutions and justifies the existence on the ground that the British colonial masters fallaciously but perfectly considered Islam to be the customs of the people in the Northern Nigeria. It then establishes that since Islamic law and Shari'ah Court are part of the Constitution and Nigerian Legal System, it is unavoidably pertinent for non-Muslim law students to study Islamic personal law and Shari'ah Court for, part of the requirements to be successful legal practitioners is the knowledge of sources of law. Six reasons are given to exhibit that learning and the teaching Islamic law does not breach the fundamental right to freedom of conscience, thought and religion of the non-Muslim law students.

⁷²For an example, Andrew F. March, (A non-Muslim) who is an Associate Professor of Political Science teaches Islamic Law.

⁷³SuratulBaqora, Q. 2 verse 256.