

## **Overhauling the Contents of Islamic Law Courses in Nigerian Universities: An Overdue Phenomenon**

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### **Abstract**

*Set on historical context, this paper examines generally the problems hindering the effective learning of Islamic Law (Sharī'ah) in the citadels of learning in Nigeria. In doing this, the paper highlights the history of legal education especially, the high level of teaching and learning of Islamic Law in the pre-colonial Nigeria and the contemporary problems facing quality Islamic legal education due to colonial antipathy for Islamic Law as well as shortcomings in the content of Sharī'ah law curriculum of the Nigerian legal education system. Using doctrinal research method, the paper finds that scanty contents of the Sharī'ah law courses taught to combined law students in Nigerian universities go contrary to the aims and objectives of the founding fathers of the Islamic legal education in Nigeria. To achieve a turn round and improve the situation, the paper recommends the need for overhauling of the contents of all Islamic Law courses in the Nigerian Universities.*

**Keywords:** overhauling, Islamic Law courses, Nigerian universities, benchmark minimum academic standards, Nigerian Universities Commission

An objective reader of literatures on Nigerian legal history will no doubt be familiar with the intense persecution of Islamic Law, otherwise known as the *Sharī'ah* legal system, by the early colonial masters. Ranging from calumnious labelling of Islamic criminal justice system as inhuman and degrading, to the introduction of the so-called tripartite tests of validity and the eventual phase-out of the parent customary criminal law (which then included Islamic Law) from operation, all facts and indices seem near to establish the imperialists' antipathy against Islam as a faith, and Islamic Law as a legal system. This abysmal situation has not ceased to exist up till now. There are even new and additional dimensions of it despite exit of the colonialists since the country's attainment of independence. Some Nigerians who seem to have taken the baton from the white men keep on ensuring the survival of early colonial antagonistic traits towards the criminal law of Islam in many forms.

One of these, which of course has been on for a relatively long time now, is the restrictive content coverage of the Islamic Law courses being taught in our citadels of learning. An adverse implication of this is the yearly turning out of half-baked sets of Islamic Law / combined law graduates who may not be able to compete considerably well with their counterparts from standard universities in Arab countries like Egypt and Saudi-Arabia. This apart, the country's legal education system, with respect to Islamic Law, will no longer reflect the rich content tradition of the early indigenous Nigerian Muslim scholars and jurists. To this extent, the legal education system will no longer mirror our true culture and heritage.

Islamic Law as a divine and distinct branch of law constitutes one of the approved courses of study under the scheme of legal education in Nigerian Universities. It enjoys this status in actualization of the local peculiar condition which the 1959 Federal Government Committee on the indigenous legal education scheme under the chairmanship of E.I.G. Unsworth stipulated as the mandatory image to be reflected by the Nigerian legal education upon its commencement. This condition was put in place then as an enduring factor to ensure preservation of the pre-colonial customary law culture which had Islamic Law in its complete form as a necessary component at the period.

Although some improvements have been recorded in the pursuit of legal education in Nigeria with particular reference to Islamic Law since its actual commencement, much still remains desired in terms of capturing the full content of this branch of law. The surface level content of what is being taught in our citadels of learning cannot in any way match up with the comprehensive and rich coverage of Islamic Law which the indigenous Muslims of the pre-colonial era were tutored on. An ardent need thus exists to balance this wide gap if legal education must really and sincerely be adapted to the local demands of Nigeria. This paper is written in order to suggest some swift and practicable measures to balance the gap.

### **Conceptualizing Islamic Law**

The conceptual approach usually given to the term '*Sharī'ah*' in academic writings bordering on topics similar to the one at hand is that of a path leading to a spring where water is fetched usually for drinking. Applying rhetoric to the usage of the term, and considering the context in which it often features, one will agree with the common interpretation of *Sharī'ah* as indicated above. The rationale behind this is at fingertips. Water is an absolutely necessary need for man's welfare, sustenance and livelihood. The ultimate aim of *Sharī'ah*, by Allah's design, is to serve the dictates of people's welfare. Ibn Qayyim notes this when he explains the basis of *Sharī'ah* as the wisdom and welfare of the people in this world as well as hereafter (Ahmed, 1980, p. 176). With this alone, it is not obscure that nexus exists between water, which signifies fortune or successful living, and people's welfare being the ultimate objective of *Sharī'ah*.

Notwithstanding the above, *Sharī'ah* in its strict linguistic and dictionary sense refers to canon, law or code. Thus, for the word to truly denote Islamic Law, which resonates around people-oriented welfare and addresses all facets of human life and even beyond, the phraseology has to be *Sharī'atul*

*Islamiyyah*, and not just *Sharī'ah*. This is just a point for noting. However, it is worth stressing that for the purpose of brevity and familiarity with the context of the term, reference will in this paper be literally made to both *Sharī'ah* and Islamic Law interchangeably.

At this juncture, it is considered pertinent to give an idea of what the technical conception of Islamic Law is. Put in terse and lucid form, this seems to be the Islamic code of conduct based on the commandant of Allah (SWT) sent through His messenger, Muhammad (SAW) to regulate relationships between humankind and their creator, and among mankind themselves (Zaidan, 2011, pp. 34-35). It is perhaps in consideration of this phraseology that Schacht and Quraishi respectively describe Islamic Law as the core and kernel of Islam itself (Schacht, 1964, p. 1) and the totality of the rules governing Muslims' lives; "the actual legal rules on the ground, the positive law" (Quraishi, 2008, p. 163).

The above having been said, it is lucid that in its technical sense, Islamic Law is that which is all involving and all accommodating. It is a collection of divine rules and regulations which offer the human race a sort of sparkling light leading to the path of accomplishment and fulfilment both here on earth and in the hereafter. Islam is a complete way of life (Mawdudi, 1986, p. 3) touching on all fields of human endeavours such as political, economic, social, cultural, moral, legal, judicial, religious, security and others. This explains the Qur'anic description of Islamic Law as that which is identified with completeness, comprehensiveness and perfection (Qur'an 6:38).

One may consider the fact of the ever-changing nature of life due to the growing needs of society and become pessimistic about the potency of Islamic Law to meet up with the various challenges of modernization and technological advancement. Nevertheless, Islamic Law is always equal to the task. The omnipotence quality of the Supreme Being, who alone knows the unknown, makes the legal system of Islam regularly suitable for all ages and epochs. Muslihuddin (1975, p. 11) explains this when he refers to the divine law as containing principles broad enough to meet the growing needs of a society and as universal and embracing in character. With this, Islamic Law differs from man-made laws which are often in need of repeals and adjustments as their human makers are always ignorant of the unexpected, unknown and unforeseen (Qur'an 31:34).

Aside the above, inevitability of periodic changes of man-made laws can be explained on another score which is alien to *Sharī'ah*. This is the egoism and animalistic tendency in man to influence the making of law in a way to suit his selfish motives and untoward interests from time to time. Of course, this paper is not intended to be construed as arguing in favour of shutting the door against inventions and trends of the new age. Rather, the contention tilts towards painting whatever inventions and developments in the coloration of form, not substance. The substance, which is most important, will always be found available on ground as far as the comprehensive law of Allah is concerned. The developments, which may be witnessed from time to time, would merely touch the form or format. To this extent, experience has shown that developments of this sort are, more often than not, well taken care of in the main *Sharī'ah* provisions, either expressly or by necessary implication.

A good example of the above is the legality of Islamic commercial transaction concluded electronically i.e. without the physical presence of the two parties to the bargain, a new development practice which came to awareness in 1970s (Power, 2013) but became widely known around 1997 (Volusion, 2006). There is no contention whatsoever on the validity in Islamic Law of a contract concluded by electronic format where there is compliance with the rules of such contract. Once the major elements of a valid contract such as offer (*Ijab*), acceptance (*Qabul*) (Ismail, 1997, p. 7) etc are complete, contract has then taken place.

On the format of the contract for example, formula, modes such as oral, writing, conduct and demonstration have been approved to be acceptable. Nonetheless, it should not be understood that acceptable format or formula of entering into contract in Islamic Law is restricted to the above mentioned. Electronic formula is equally acceptable where it is not found to portend contrariness to the overall interest of Islam. For instance, Abu Zahrah (1357H) in his legal definition of *al-'aqd* (contract) in Islamic Law of transaction had this to say: It is “the connection that exists between two statements, or whatever replaces the two statements, from which consequences a legal obligation emerges” (p. 171).

Explaining the integral features of the above definition, Zubair, the First professor of Islamic Law in West Africa refers to the phrase “two statements” as offer and acceptance between the contracting parties (Zubair, 1991, p. 10). Further to this, it is hereby submitted that a portion of the same quotation which says “whatever replaces the two statements” is a lucid pointer to acceptability in Islamic Law of any other reasonable mode formula of conveying offer and acceptance in contracts apart from oral statement. Thus, as intimated earlier, emergency of modern inventions is, in Islam, a matter of variance in form, not in substance. And for each varied form, plethora of relevant provisions from classical sources of Islamic Law is available for guidance and application.

What the above analysis further reiterates is the fact of comprehensiveness of Islamic Law which Nasi explains elsewhere when he describes the same legal system as what transcends the universal moral principles to details of how man should conduct his life in harmony with divine will (Nasi, 1971, pp. 95-96). Al-Hashimi (2007, p. 31) seems to have encapsulated this truism better when he writes that:

...Principles of *Sharī'ah* encompass all the basic aspects of human life. They encompass the life of the individual, the family and the society, the relationship of individuals with one another, the foundation on which the state rests and the principles on which international relations are based. It (sic) set out the laws that govern civil, political, social and economic life, and it has (sic) not omitted any aspect of human life without setting guidelines. These laws are still ahead of the legislative theories that mankind has produced.

### ***Sharī'ah* in Pre-Colonial Nigeria**

To some writers, the celebrated 1804 Sokoto Jihad led by Shaykh Usman Dan Fodio was what opened the gate of *Sharī'ah* application in the entire area now called Nigeria. This is far from being the truth as Islam had been

serving the function of the applicable law in Nigeria in the area of governance and administration of justice for more than two centuries before the coming of the British (Ambali, 1998). It needs to be said that advent of Islam in Nigeria was possible owing to the inter-territorial influence between the West Africa, into which Nigeria was and is still geographically conscripted, and the North Africa where the spread of Islam first reached, outside the Arabian Peninsula.

As put by Al-Ilory – a prolific Nigerian Arabic writer, the laudable proselytizing process by which Islam percolated to the North Africa owes its success to the great pioneering efforts which Uqbah Ibn Nafi'u exerted on the instructions of Caliph Umar through Amr Ibn al-'Asy (Al-Ilory, 1987, pp. 18-19). Through this, Islam spread to the North Africa, West Africa and therefrom to Nigeria. Subsequent to this, Nigeria began to witness an influx of Islamic clerics and scholars of note on her shores. For instance, the first formal Islamic school was established by Umar bin Mukhtar, an Arab man from Morocco in 1787 for the purpose of teaching Sharī'ah to the Muslims (Abu-Bakr, Sadiq, 1988, p. 100).

With the account given by (Qaribullah, 1993, pp. 35-53), other names that can be cited among influx of foreign scholars into the country then include Yahya Ibn Abdullah Ibn Hassan from Madinah, Fathullah Ibn Ra's from Qairawan and Muhammad Ibn Zahr from Tunisia. Others are Abdullahi Thiqah from Mali, Tahir Ibn Ibrahim from Fairam and Umar Malam Kabar from Timbuktu.

It is needless to say here that the influx of these scholars into Nigeria opened the way for the dissemination of qualitative teaching of Arabic language, Islamic studies and Islamic Law among the indigenous learning Muslims. This took place majorly in the North-Eastern Zone of the present-day Nigeria, such as Yan-Doto, Fairam, Borno and Kano, among the places considered then as haven of settlement for sojourners. At that time, Islamic Law was the major legal system in the zone with its gradual displacement of the untoward native law and custom which had stood its ground firmly before the advent of Islam. Little wonder therefore that when the famous ruler of Kanem Borno Empire (Abdul-Jalil Humme) accepted Islam, he made it the religion of his court (Ambali, 1998, p. 15).

Once more, it needs to be mentioned that application of Islamic Law was total at the beginning. Starting from the 12<sup>th</sup> century, Hausa States such as Katsina, Kano, Rano, Gobir, Zaria and later, Ilorin and others began to accept Islam through the influence of Borno Empire (Ambali, 1998, p. 15). In the Hausa states too, Islam, upon becoming firm, became the order of the day with its rules and principles being vetted for governance and justice administration. It is on record that when Muhammad Ibn Abdul Karim Al-Maghili (notable Islamic scholar and student of Abdur Rahman Tha'alabi) came to settle in Kano from Maghilah, a tribe in Morocco, he was requested by Rumfa, the reigning Emir then in Kano, to put together and present to the latter a book on the principles of royal administration and duties of princes. This request was indeed granted with all pleasure and the book was made use of in toto (Qaribullah, n.d., p. 159).

The above account and others alike clearly show that the spread of Islam and application of Islamic Law had, at least in the Northern Nigeria,

predated the 1804 Sokoto Jihad. The effect which may however be attributed to the Jihad was, therefore, as documented by Ambali, "...the spread of Islam and establishment of Sokoto caliphate comprising a number of emirates spread all over Hausa States..." (p. 16).

In Yoruba land, however, impeccable records are also replete with facts of, and information on the availability of impressive scholarship in the fields of Arabic-Islamic studies and Islamic Law among the pre-colonial southern Yorubas. Impossible to forget were the then positive impacts on Islam and Islamic Law by eminent Muslim personalities in the South-West such as Muhammad Shitta Bey in Lagos, Oba Abibu Lagunju in Ede, Oba Momodu Lamuye in Iwo, Kazim / Raji Lagunju in Ile-Ife and Are Momodu Latoosa in Ibadan (Oyeweso, 1999, p. 47). These great personalities all contributed their quota in advancing the banners of Islam and Islamic Law application in their respective domains. In this respect, of particular note was Oba Abibu Lagunju of Ede who stood out among equals with an impressive scholastic profile of being a versatile Islamic scholar and an Oba (Al-Ilory, 1986). He could therefore be compared considerably well with the like of Abdul Jelil Humme, celebrated ruler of Kanem Borno, in terms of rendering selfless service to the growth of Islam and applicability of its laws. Siyan Oyeweso records thus:

...Lagunju was a Muslim leader trying to rule, according to the dictates of the Sharia, over a predominantly traditional society, a community that cherished its old-age customs, traditions, norms and values. It was in his attempt to apply Islamic penal code (as he understood it) in the day to day administration that he came into conflict with the traditional forces. And it was this formidable opposition, which eventually won the power contest since 1893 that tends to brand him as the "bad-man" of Ede history. That was the tragedy in which Lagunju was caught up (Oyeweso, 2012, pp. 21-22).

Further, as a proof of the many glowing roles of Oba Momodu Lamuye of Iwo on the implementation of Shari'ah in his town, Siyan Oyeweso writes:

Oba Momodu Ayinla Lamuye of Iwo (1858-1906) certainly deserves historical attention in any work on the growth of Islam in Yorubaland. This is partly because Oluwo Lamuye was not only one of the few Yoruba Muslim Obas of the 19<sup>th</sup> Century, he was also a practicing and zealous Muslim. He belonged to the tiny club of Yoruba political office holders who used their status to consolidate the position of Islam and to allow Islam influence the conduct and practice of government (Oyeweso, 2012, p. 34).

The few instances herein above mentioned and perhaps similar available others elsewhere are possibly what Oba has in mind when he submits thus:

... Islamic Law was also studied in the south among the Yorubas. Islamic Law was so entrenched in Yoruba land that it was the official law in some Yoruba towns before and during the early part of the colonial era (Oba, 2004, p. 99).

### Colonial Antipathy for Islamic Law

No doubt, the uppermost yearning of every sincere Muslim is to see Islamic Law, in all its ramifications, being accorded the status of a complete system to govern his affairs either as an individual in his private life or with other country men who profess the same faith with him. This enviable legal position, which was once present before and during the early part of the pre-colonial Nigerian era, was enjoyed to the brim by the first successive sets of early Nigerian Muslims who lived in the period.

Although evidence of a number of somewhat appealing strategies by some colonial masters towards *Sharī'ah* abound, the real mind of these masters, which was antagonistic to *Sharī'ah*, started unfolding when Islamic Law in the Northern Nigeria was categorized under the "Native Law and Custom". Native law and custom, since then, had been defined by the High Court Laws of Northern Nigeria in Section 2, High Court Law (Chapter. 49) Volume. 2, The Laws of Northern Nigeria, 1963 to include "Moslem Law".

By conscripting Islamic Law under the said native law and custom, the implication was grave for Islamic Law application as same was made subject to the satisfaction of the harsh and self-imposed tripartite tests of validity put in place by the colonialists. This, indeed, was too absurd an arrangement.

All this while, Islamic Law application, where found suitable, could be invoked from any part of its comprehensive ramifications; be it social, civil, criminal, political, economic etc. But when the Native Court Laws came into force in 1957, it narrowed down the scope of Islamic Law application by taking the pure Islamic principles on criminal matters outside the confines of operation.

In the circumstance, Penal Code Law of the Northern Nigeria was introduced as replacement, whereas, a wall of difference exists between the provisions of this code and those of the classical principles of Islamic Law on criminal matters. Worse still, Islamic Law was subsumed under the native law and custom.

As if the above was not enough, administration of Islamic Law in the country was put under some constitutional constraints. For instance, s. 244(1) of the 1999 Constitution allows appeals to lie from decisions of a *Sharī'ah* Court of Appeal to the Court of Appeal for determination. In the same section, there is an introduction of a clear restriction to the kind of appeals which can go from the *Sharī'ah* Court of Appeal to the Court of Appeal. These are appeals on any question of Islamic personal law which the *Sharī'ah* Court of Appeal is competent to decide. The introduction of this restriction is a reaffirmation of the restrictive jurisdiction of *Sharī'ah* Courts of Appeal of various states provided for in s. 277 of the 1999 Constitution. Provision for similar restriction in the Jurisdiction of the *Sharī'ah* Court of Appeal, Abuja, is contained in s. 262(1) of the 1999 Constitution.

Going through the combined effect of these constitutional provisions; ss. 244(1), 262(1) and 277(1), the point is clear that aspects of the *Sharī'ah* applicable in the *Sharī'ah* Court of Appeal are those that touch Islamic personal law. These aspects of Islamic Law have been stated to be Islamic Civil matters / causes bordering, among others, on Islamic marriage, validity or dissolution of same, family relationship or guardianship of infants, endowment, gift, succession or maintenance of a Muslim who is physically or mentally infirm.

The relevant sections where these aspects have been stated are ss. 262(2)(a-e) and 277(2)(a-e) of the 1999 Constitution

The above restricted head issues are, up till now, the only Islamic Law matters allowed by the Constitution as areas of jurisdiction for our *Shari'ah* Courts of Appeal, both in the Federal Capital Territory and in the various states. Without an intention to hide feelings, this constitutional arrangement does not go down well with the concerned Muslim citizens of this country.

Testimonies on the early spread and popularity of scholarship in Arabic language and Islamic Law in the area now known as Nigeria have been copiously referred to in the preceding sub-heading. Upon advent of the colonialists on our shore, they met this high level of scholarship on ground and saw, initially, imminence of retaining the same especially in that axis which later became known as Northern Nigeria. Restricting retention of *Shari'ah* to the axis then was as a result of the dominance and deep rootedness of the Islamic culture thereat more than in any other area (Obilade, 1979, pp. 17-18).

This initial approach of the colonialists towards Islam and Islamic Law could be best referred to as an insincere appealing strategy. Lord Crumer's statement, as quoted by Al-Ilory, on the imperialists' need to wipe away the burning sensation for Qur'anic interest from the Nigerian Muslims, being a *sine qua non* for entrenchment of imperialism (Al-Ilory, 1987, p. 150) can be cited as a good testimony on the antipathy which the colonial masters harboured for Muslims and the Islamic legal system. This antagonistic mind towards *Shari'ah* started unfolding when Islamic Law in the Northern Nigeria was categorized under the "native law and custom".

### **History of Legal Education in Nigeria**

Legal Education is simply the education of individuals to become lawyers. Put in another form, legal education is a system of education that produces skilful and ethical lawyers who must have, among other things, a technical competence to analyse legal issues against the background of existing law, the direction the law is or should be developing and the key policy considerations (Haruna, Chiroma, & Abubakar, 2012, p. 298). Bachelors, Masters, Doctorate degrees, Continuing Legal Education (CLE) and Pupilage among others represent a variety of some levels of acquiring legal education in Nigeria. For the purpose of this paper however, what is in mind with the phrase "Nigerian Legal Education" is restricted to the courses of study which undergraduates receive in various faculties of law in the Nigerian Universities.

It is important to note here that what predates formal legal education in Nigeria was non-formal legal education. The pioneer lawyers who practiced in the country during the colonial period had no legal education (Erugo, Nwankwo, Ikeocha, & Okoroafo 2012). In fact, there was no local facility for it (Erugo et al., 2012). As Hon. Justice Onalaja puts it, no institution existed during the colonial era as habitat of formal training of lawyers in Nigeria. Fit and proper persons having general basic education and some idea of English law such as court clerks were only appointed by the then Chief Justice and granted license as attorneys to practice for six months (Erugo et al., 2012).

As recorded by Niki Tobi, all indigenous people who wanted to become lawyers at the period traversed the indigenous axis to England in order to



acquire legal education (Niki, 2004). This was a relic of colonialism as the British were our colonial masters on whose legal education and legal system we have stayed (Niki, 2004). This scenario no doubt softened the ground for importation of foreign legal education into our midst with disregard for our social, economic, educational, religious and cultural identities.

However, shortly before the Nigerian independence in 1960, the United Kingdom thought it needful to pave way for a system of legal education of Africans within Africa, so that manpower for administration of justice and legislation would not be in dearth. This led the Federal Government of Nigeria in 1959 to set up a committee on the future of the legal profession in the country (Mamman, 2010). Mr. Eisa Unsworth, the then Attorney-General of Federation, headed the said committee which, in carrying out its terms of reference, recommended among others, the imminence of the provision of legal education locally, with adaptation of the same to the needs of Nigeria, and the pertinence of establishing law faculties in Nigerian universities (Mamman, 2010).

With respect to the establishment of law faculties, the recommendation has long turned out to be a success story of landslide achievement. Starting with the premier faculty of Law which the University of Nigeria, Nsuka, established in 1961 (Omaka, 2004), increase in the number of faculties of law in the country has been so impressive that Madubuike-Ekwe even sees it as outrageous (Madubuike-Ekwe, 2017, p. 132).

As for the first recommendation of the committee on adapting the local arrangement for the legal education to the needs of Nigeria, it is hereby submitted that this is yet to be fully realized. The needs of the majority citizens of Nigeria which the committee report advocates compliance with have long been in favour of according due recognition to the teaching and learning of Islamic Law courses in our universities. However, a peep into the contents of some of these courses, as available in the Benchmark Minimum Academic Standard designed by the Nigerian University Commission would reveal that what is obtainable thereat falls short of expectation.

### **Shortcomings in the Content of Islamic Law Curriculum of the Nigerian Legal Education**

Perhaps, the best way to start this sub heading is to reflect on Prof. Zubair's well-articulated lamentations in his inaugural lecture delivered close to two decades ago. According to him, a wide disconnect exists between the teaching of Islamic Law and the Nigerian society (Zubair, 2003). In his exact words:

Teaching of Islamic Law to Law students in Nigerian universities should be a natural assimilation between the law and our society. But the leadership at the citadels of learning in this country, Nigeria, keeps the society and its customary values and norms at arm's length to the law taught to our LL.B. students. The antiquated and alien laws and procedures of Britain take precedence over and above indigenous norms and precepts, our courts of record are made to suffer the same tale, under the meaningless colonial principle of repugnancy to natural justice, equity and good conscience necessarily to be interpreted in terms of English notions. Forty-three years after the country's

independence, not much change of attitude to this extraneous law has been recorded both from the bar and the bench (p. 16).

The learned professor was prompted to so lament because of the Nigerian Universities Commission's (NUC) non recognition as at 1989 (Zubair, 2003, p. 16) of either the LL.B. programme with specialization in Islamic Law or the combined programme of Islamic Law and common law. Whereas, Ahmadu Bello University, Zaria and Bayero University, Kano had commenced such programmes since 1975 and 1978 respectively. This aside, Zubair also bases his lamentation on the irrationality of the NUC's subsequent approval of Islamic Law as a distinct department but having just one optional course of study. He then asks sarcastically "how can a department exist on an optional law course? To be candid, the NUC's decision, at the time, of making the whole department of Islamic Law stand on one single course – whether optional or even compulsory – was abysmal and irrational to say the least. In fact, it was at arm's length with the Unsworth committee report which recommended, inter alia, that legal education should be provided locally and adapted to the needs of Nigeria (Mamman, 2010).

No doubt, the local need of Nigeria on legal education is certainly to reflect the kind of depth and detail at which *Sharī'ah* was taught to knowledge seekers in the pre-colonial Nigeria. The standard then, judging from what has been submitted on the level of *Sharī'ah* in the country ahead of the colonial invasion, can no less be described than being at the Zenith of excellence and perfection. This made it possible to produce scholars, clergies and judges who presided over the *Sharī'ah* Courts at the period. They were all persons of considerable learning and great respectability.

All this notwithstanding, those early Nigerians who took over the baton of education from the white men were reluctant to allow Islamic Law its rightful position of primacy in the indigenous legal education system. Regrettably, this pattern of discouraging and lukewarm concern for *Sharī'ah* in Nigeria still persists. Of course, this is not surprising. The colonialists proved themselves to be staunch adversaries of Islam as a faith and Islamic Law as a legal system. This antipathy informed their categorization of Islamic Law under the native law and custom with serious retardation and grave implications for Islamic Law application (Obilade, 1979).

However, from the time of Zubair's inaugural lecture and now, it must be said that Islamic Law as a distinct branch of study in Nigerian Universities has recorded some remarkable progress. The number of universities where Islamic Law is being offered now transcends the four initial schools – Ahmadu Bello University, Bayero University, Kano, Usman Dan Fodio University and University of Maiduguri – in Nigeria. The teaching of Islamic Law courses is now recognized in faculties of law of other universities such as; University of Ilorin, University of Jos, University of Abuja and Lagos State University, among others.

Aside the development of increase in Islamic Law offering faculties, the number of courses that can be offered under Islamic Law has also grown up and this has been captured by the Benchmark Minimum Academic Standards (BMAS). For Instance, courses such as Introduction to Islamic Law, Islamic

Law of Crimes and Tort, Islamic Law of Transactions, Islamic Law of Procedure and Evidence, Islamic Family Law and Succession and Islamic Jurisprudence are now being taught and some of them are already captured in the BMAS.

There is even a portion in the BMAS provision which appears to give room for hope and possibility of additional relevant Islamic Law courses in the BMAS as time goes on. The same is provided in s. 3(3) of the NUC (2018, p. 25) Benchmark Minimum Academic Standards for undergraduate programmes in Nigerian Universities. This provision is commendable to some extent. The phrase “to some extent” at this juncture is deliberate. This is because the BMAS provision on the possibility of addition to the available Islamic Law courses is constructed in a way to suggest that such addition can only take place where there is elimination of any of the already existing Islamic Law courses on account of irrelevance. For the purpose of clarity, the content of the said portion of the BMAS provision which hinges the introduction of additional Islamic Law course upon elimination of an existing one (where the latter becomes irrelevant or unimportant) goes thus: “The list of such courses should not at any given time, be closed, but should remain open. So that courses that become irrelevant or unimportant should be eliminated and new relevant ones added...” To this extent, the arrangement will not really be an addition, but a replacement.

Assuming without conceding that the addition is not even hinged on the condition of eliminating any existing course, the provision will still not be free from shortcoming. The BMAS conscription of the existing Islamic Law courses comes under the category of elective courses. This is a disservice to the study of *Shari’ah* in our society. The arrangement has the implication of making the available Islamic Law courses as well as those others that may be added, to compete with other common law courses in attracting the preference of students. The havoc in this is that some students will choose common law courses all through in total disregard for any of the Islamic Law courses and such students will consequently be denied of the rich taste of the divine law.

### **Analysing the Islamic Law Course Unit and Content vis-à-vis BMAS Provision**

Much has been said in the preceding paragraphs on the need to increase on the number of Islamic Law courses being taught in our citadels of learning in Nigeria. This, as already explained, is with a view to bringing the volume of the courses to be offered in close to the quantity of what is being offered in some sister universities in the Arabian clime. The benefit accruable from this concerns equipping the Nigerian graduates with necessary potentials with which to compete considerably well with other students in the same discipline outside the country. What the writers now intend to do is a brief assessment of both the contents of the few available Islamic Law courses and the weekly units of study allotted to them in the Nigerian Universities. The essence is to advocate for expansion where the contents are found scanty and the units insufficient.

Taking Islamic Law of crime and Torts as a case study, few important areas of neglect in the BMAS for the undergraduate programmes have been observed. One of these touches the restrictive divisions of murder into

intentional and mistaken, with little or no concern for the other branches of this dastardly act such as quasi-intentional and quasi-mistaken murders.

As for the subject of *Maqāsidus Sharī'ah*, that is, the objectives of *Sharī'ah*, this is a very important area of Islamic Law which must not be lost sight of in the university education of Islamic Law or Combined Law specialty. In the current BMAS edition for the regulation of university courses as prepared by the Nigerian Universities Commission, the subject of *Maqāsidus-Sharī'ah* expectedly features, but programming the same to be taught in the first semester of year II while *hudūd* – offences and punishments – are stated for the second semester of the same academic year leaves much to be desired. This work sees the need for teaching the two subjects alongside each other in the same semester. The symbiotic relationship between the two, which will make them to be better understood and appreciated by students, inspires this submission.

*Hudūd* which are offences in Islamic Law with punishments already prescribed majorly in the Qur'an or in the sayings of the prophet (SAW) in very few cases are seven in number. The punishments inflictable in cases of their commission constitute some of the penal provisions in Islamic Law that have often times received alleged attacks of harshness, cruelty and indignity by cynics and critics of the legal system of Islam. Whereas, an in-depth study of the subject of *Maqāsid* will definitely enlighten students as to why some penalties under Islamic Law stand the way they are; for example, for the purpose of safeguarding the security and overall interest of the society at large. The allegation in this wise stems from the Western self-styled conception of human dignity which often times evokes unnecessary sympathy for criminals without considering the gravity of their unbecoming acts and the impacts such acts could have on the immediate victims and the society at large. But quite unlike many among non-Muslims scholars, Gasked seems to appreciate that the so-called horrible nature of some of these *hudūd* punishments of Islamic Law is responsible for making Saudi Arabia, as an example, a country with the lowest crime rate in the world (Gasked, 1967). With this, the higher or ultimate objective of the penal legislations of Islamic Law has been let loose. Such is the very important understanding of the rationale behind all divine legislations of Islamic criminal justice system that university students of Islamic Law will grasp with their parallel study of *Hudūd* offences and punishments alongside *Maqāsidus-Shariah* (Al-Allaf, n.d.).

On the units allowed in the BMAS for the teaching of the few Islamic Law courses as they are available currently, this seems to be in order to some extent. All the compulsory law courses including the Islamic Law variants of this category are each given 8 credit units to be taught weekly. This turns to a reasonable length of duration for teaching these courses at the end of the 15 weeks per semester arrangement of the university educational system. The same explanation holds for the units allotment to both elective and optional non-law courses.

### **Justification for Expanding the Contents of Islamic Law Courses in Nigeria**

Some areas of Islamic Law courses in need of expansion in Nigerian Universities have been highlighted in some of the preceding sub-headings. The Islamic Law of Crime and Tort has been relied upon as a case study in this

respect. This work is not unaware of the current global trend of comparative legal education which seems to favour the study of many courses under the dominant legal regime in a given jurisdiction while reducing the courses to be taught under the non-dominant law thereat to few and mere basics. However, while it is possible for one to consider this trend and resolve against the call for expansion of the contents of Islamic Law courses in Nigeria which is a common Law (and not Islamic Law) tailored jurisdiction, writers of this paper hold contrary view to this line of thought.

Nigeria must be understood to be in a special class of her own in view of her operative legal system. The country is undoubtedly a multi-religious state with Islam, Christianity and indigenous beliefs co-existing side by side on a parallel level. Of these tripartite faith inclinations, adherents of Islam are undoubtedly on the side of the highest majority (Shatsari, 2016). According to Paden (2008), Nigeria is the most populous country in Africa and it even has the sixth largest number of Muslims in the world. Only Indonesia, Pakistan, India, Bangladesh and Egypt have larger Muslim populations than Nigeria (Paden, 2008). A source in the United States of America has put the number of Nigerian Muslims at 50 percent, while the Christians and indigenous belief followers are put at 40 and 10 percent respectively (Paden, 2008). The implication of these facts and indices is that while it is true that Nigeria is not an Islamic state by her Constitution, relegating the study of Islamic Law to the lowest ebb thereat is also an infraction on the educational rights of the Nigerian Muslims who constitute the largest proportion of the country's inhabitants *Dorawa v. Daudu* (1975).

In addition to the above on the justification for expanding the frontiers of Islamic Law courses in Nigeria Universities, another point lies in the volume of recommendations of the Unsworth led Committee of the Federal Government of Nigeria which was set up in 1959 to consider and make proposals for the commencement and future of the legal profession in the country (Mamman, 2010). It was part of the committee's recommendations upon satisfactory brainstorming that legal education should be provided locally and adapted to the needs of Nigerians (Tobi, 2004).

The local needs of all Nigerians as in the committee's recommendation indicated above could not be interpreted otherwise than factoring into the Nigerian legal education system, the pre- colonial rich culture of high-sounding learning of Islamic Law, which started in the Borno Empire as far back as late 16<sup>th</sup> century (Trimingham, 1959). But as noted by Abikan, the Nigerian legal education system was rather made to satisfy the yearnings of the English Law variants alone in total disdain for the Islamic Law aspects (Abikan, 2009), until very much later when few portions of these other aspects were incorporated. With this, it is lucid that the somewhat scanty quantum, of what is being taught as Islamic Law in the Nigerian Universities is against the aspirations of the pioneer policy makers on legal education matters, hence, the need for the content expansion being advocated for in the work at hand. What further strengthens the demand above is the current trend of global acceptability of Islamic banking operations for the inherent gains associated therewith. To prepare our university graduates to cope with the challenges of this banking operation either as lawyers or judges, there would surely be need for an in-depth

study of diverse areas of Islamic Law relevant to banking such as commercial law, contract or even company law. All these would require a kind of learning and study deeper and richer in horizon than what is currently available in the LL.B. curriculum of Nigerian Universities.

### **Conclusion and Recommendations**

While advocacy is still mounting for recognition and introduction of more Islamic Law courses in our universities as done by Zubair in his inaugural lecture (Zubair, 2003, p. 43), there is certainly the need to expand the contents of the already available courses in the various Islamic Law departments. Teachers of Islamic Law must put heads together and review these courses with a view to identifying areas which are in need of expansion and particular exposition. It is upon fine-tuning this homework that Islamic Laws of Crimes and Tort, of Transactions, of Procedure and Evidence, Islamic Family Law and Succession, Islamic Jurisprudence and Introduction to Islamic Law can be adequately upgraded as subjects of study in our scheme of things in the Nigerian legal education sector.

A cursory look at almost each of the available Islamic Law courses that are being taught presently at undergraduate level of Common and Islamic Law in Nigerian Universities reveals the need for an overhauling exercise. To achieve this, it is imperative that the Nigerian University Commission (NUC) approves its general overhauling and captures the same in the BMAS. This will bring the courses in tandem with the philosophy and fundamental principles of the LL.B. degree program which is to produce students who are capable of withstanding global legal challenges and can compete considerably well with counterparts from any part of the world.

In the area of Arabic language as one of the general studies being offered in year I, the two units (two hours) allotted it per week seems too much on the low side in view of the relevance of the subject to the specialty of Islamic Law. The primary sources of this divine law are written in Arabic. A good university product of Islamic Law will be better off if he is well grounded in the language of these primary sources which he would have to consult from time to time. It is in line with this high premium need that this insufficient number of units (two) is recommended to be increased to at least six per week for effective handling of the course (Arabic).

Finally, this work recommends that the first two academic years, instead of only the first year, should be for the conduct of the subject as this will pave way for the much-needed time. Akin to this is the need, as well, to increase the richness of the content and standard of the Arabic taught to these students. The current curriculum in use which requires them to only be taught introduction to Arabic alphabets, writing systems, elementary conversational skills, basic reading skills and sentence construction in Arabic is deemed quite below what these students really require to be acquainted with the language of the primary sources of Islamic Law. This work hereby recommends expansion of the curriculum in this wise.

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