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# SENTENCING UNDER *SHARI'AH* AND NIGERIAN LEGISLATION: PRACTICE, PROCEDURE AND CONTEMPORARY CONSTITUTIONAL CHALLENGES

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**10.5281/zenodo.23665544**

Abstract

The imposition of something disobliging by an authority upon a person due to an unacceptable behaviour by the person to the authority is known as punishment. Considering the fact that there are different theories of criminal behaviour, the commonly known justifications for imposition of punishment are deterrence, incapacitation, retribution, and rehabilitation. The fundamental objective of punishment in all legal systems is prevention of crime for a cleaner society. Significantly, every legal system admits that the Islamic law possessed some certain unique features that trigger effectiveness in achieving its goals compared to the Nigerian counterpart, inclusive of Sentencing under Shari'ah and Nigerian Legislation, Practice and Procedure with Contemporary Constitutional Challenges. Against this background, the author argued the purview of dissimilarities between sentencing under Islamic law and Nigerian legislation. The methodology adopted is doctrinal, as it was found that sentencing under Shari'ah and Nigerian legislation are relatively at odds over procedure and execution; and independent of each other. The paper therefore concluded that the modes of sentencing under the Islamic law and Nigerian legal system should be genuinely harmonized, unified and standardized for a plausible co-existent and tolerant legal system. The author maintained that harmonizing sentencing from these two legal frameworks should be prospective in bridging the gaps between religious dictates and constitutional safeguards.

**Keywords:** Sentencing, Punishment, Theories of Punishment, Objectives of Punishment, Shari'ah, Nigerian Legislation.

## 1. Introduction

The process of determining whether the accused did the act or committed the omission alleged against him depends on sentencing him for the alleged act committed or the omission of the act. Criminal prosecution aims at the conviction of the accused person or proof of the guilt of a defendant. The conviction goes with sentencing to some form of punishment or sanction pronounced by the trial court. Such sanctions could take any or a combination of many forms like imprisonment, fine, caning, *haddi-lashing*, amputation, corporal or capital punishment, forfeiture etc. Sentencing is

one of the several ways which together comprise what is often referred to as Criminal Justice System. One of the essential functions involved in justice system is to affirm and reinforce important societal values.<sup>1</sup> The unwanted and unpleasant imposition of something upon a person or group of persons by a competent authority because of an unacceptable behaviour to the authority is known as punishment.<sup>2</sup> There must be an authority behind the imposition of punishment.<sup>3</sup> Infliction of something upon a person without a competent authority is not punishment.<sup>4</sup> This may be either revenge or something else. All the known schools of thoughts provide justifications for punishments. The basic and universal concepts for the justifications of punishments are retribution, deterrence, rehabilitation and incapacitation of a wrongdoer from committing the same crime again. These justifications are provided by different schools of thoughts with different approaches for achieving the same desired objectives. For example, the incapacitation, in Nigerian law includes the imprisonment or isolation of the victim while in the Islamic law the removal of hand in cases of thefts, have the objective to make the wrongdoer incapable of committing the crime again. However, the Islamic law and the Nigerian law philosophy are always at cross purposes some at times, regarding the objective of punishment.

## **2. Nature and scope of Offences under Islamic Law**

Islamic criminal law contains six major offences, each of which has a penalty prescribed and fixed in the *Qur'an* or/and the *Sunnah*. These offences are known as *hudud* offences categorized into two categories; one is known as *haqq Allah* and the other is known as *haqq Adami*. The six offences generally recognized as offences of *hudud* are:

- i. Wine/alcoholic-drinking,
- ii. Theft,
- iii. Armed robbery,
- iv. Illicit sexual relations,
- v. Slanderous allegation of unchastity; and
- vi. Apostasy.

Apart from retaliation (*qisa's*) which is the punishment for homicide and injury all other offences, under the Islamic penal system, are punishable by discretionary punishments (*ta'zi'r*). However, to

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<sup>1</sup>K.E. Ikenga Oraegbunam, 'Nature and Principles of Sentencing in Criminal Jurisprudence in Nigeria' (2019) *International Journal of Innovative and Political Studies*.

<sup>2</sup> D. Harry and A. Jay, *Comparative Criminal Justice Systems* (5th Ed.). Cengage Learning (2011) 60.

<sup>3</sup> M. Cherif Bassiouni, 'Crimes and the Criminal Process', *Arab Law Quarterly*, Vol. 12, No. 3 (1997) 269-286.

<sup>4</sup> K. S. Vikor. *Between God and the Sultan: A History of Islamic Law*. (Oxford University Press: 2005) 281-285.

classify an offence as a *hadd* offence, it must be established that the punishment for it is determined by the *Qur'an* or the *Sunnah*. This establishment was confirmed under section 36 (8 & 12) of Nigerian Constitution<sup>5</sup> in other words, that for an offence to be punishable, the offence must be spelt out in a written recognised law and the punishment thereto must be provided.

#### A. General terminologies for Punishments under Islamic Law

Under Islamic law, punishments are categorised based on determination into fixed punishments (*hudud*) with mandatory penalties, retaliation and compensation (*qisa's*) for crimes against individual persons; and discretionary punishments (*ta'si'r*) for the offences without fixed penalties. These three categories of punishments may be meted respectively through:

- a. Cutting off hand(s)/Amputation-theft
- b. Canning/lashes-*zina* (fornication), *qadh* and alcoholic drinking,
- c. Death penalty-homicide and injury,
- d. Stoning to death-Adultery,
- e. Confinement,
- f. Banishment; and
- g. Crucifixion

#### B. Basic Categories of Punishments under *Shari'ah*

Most penal systems in today's societies are based and dependent on the current social sentiment. In Islamic law, punishment is based upon divine revelation wherein no doubt a guide to the believers.<sup>6</sup> There is no leeway for sentiment or possibility of change. The laws categorizing punishments were established by the Creator who is Infinitely Wise and Merciful. In view of the changing world, the out-dated system of laws which are in need of amendment, replacement or abolishment can only be better reformed<sup>7</sup> by the everlasting divine dictate as the matter of a purpose in life that we are given a set of rules to live by and achieve that purpose. These rules are the ultimate criterion of justice and mercy and cannot nor need not be changed or measured against the changes and desires of society. The categories of punishments under *Shari'ah* are therefore as follows:

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<sup>5</sup> Constitution of the Federal Republic of Nigeria (CFRN) (1999) (As Amended)

<sup>6</sup> M.T. Al-Hilali and M.M. Khan, *Translation of the Meanings of the Noble Qur'an in English Language* (King Fahd Complex for the Printing of the Holy *Qur'an*) at Qur'an 2:2

<sup>7</sup> Islamonline, 'The Concept of Punishment in Islam' at <<https://fiqh.islamonline.net/en/the-concept-of-punishment-in-islam/net>> accessed on the 17 June, 2023 at 9:40pm.

- i. *Hadd*:<sup>8</sup> the first category of punishment under *shari' ah* is *Hadd*, which connotes divinely prescribed forms of fixed punishment based upon the *Qur'an* and *Sunnah*. These are punishments set to preserve the public interest; they cannot be lightened nor made heavier, nor can the offender be pardoned. They instill a deep feeling of abhorrence in the society towards the crime for which the offender has been punished. Such crimes include drinking alcohol, armed robbery, theft, illicit sexual relations, apostasy, and slanderous accusations of promiscuity.<sup>9</sup>
- ii. *Qisa's*: the second form is called *Qisa's*, which is the punishment for homicide and assault. Whenever a person causes physical harm or death to another, the injured or family of the deceased has the right to retaliation. A unique aspect of *Qisa's*, is that the victim's family has the option to insist upon the punishment, accept monetary recompense (*Diyyah*), or forgive the offender, which could even avert capital punishment. This leaves the door open to compassion and forgiveness.<sup>10</sup> Settlements are therefore encouraged outside of court, as a judge must exact the punishment.
- iii. *Diyyah* (blood money): this is a monetary form of sentencing under Islamic law whereby compensation is asked to be paid to the family of the victim of an offence. Examples of such offences include manslaughter and accidental injury.<sup>11</sup> *Diyyah* is not limited to only death but also applies to physical assault. Killing of a fetus is compensable.<sup>12</sup> To scholar like Dr *Monzer Kahf*, if any person causes the death of another out of negligence, the killer becomes liable for *Diyyah* as long as it is established that the killing was not as a result of actual act and intention of the deceased person. For instance, if a killer drives a car that ends the life of a deceased who is confirmed not to have committed suicide by intentionally jumping into the car, the killer is required to pay *Diyyah* to the family of the deceased person<sup>13</sup>
- iv. *Ta'zi'r*: the third category is *Ta'zi'r*, every other crime other than the *hadd's* and *qisa's's* fall into the third category, which is a discretionary punishment decided by the court. So, in the

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<sup>8</sup> O.A. Farruk, *Ibn Taimiyya on Public and Private Law in Islam or Public Policy in Islamic Jurisprudence*. (1969) [OCLC 55624054](#).

<sup>9</sup> Ibid.

<sup>10</sup> Islamonline, 'Unintentional Killing and Diyyah' at <<https://fiqh.islamonline.net/en/the-concept-of-punishment-in-islam/net>> accessed on 17 June 2023 at 9:40pm.

<sup>11</sup> Ibid

<sup>12</sup> R. Shaik, 'The Relevance of Diyah in Islamic Criminal Law in the 21<sup>st</sup> Century' at <<https://themuslimvibe.com/>> accessed on the 11 September 2026 at 4:15pm.

<sup>13</sup> Ibid.

light of this, one cannot just brandish Islamic penal codes as being too harsh or inhumane while neglecting the fact that the source of those penal codes is the Mighty Lord, the Supreme Lord of the Universe. Everything with Him has been measured with absolute perfection.<sup>14</sup> This perfection is reflected in the strict procedures laid down before a person can be convicted and punished. Actually, all forms of punishment stipulated by *Shari`ah* are more reforming and more successful in preventing recurrent crime than the man-made legal systems whose futility is proved and confirmed by daily incessant crimes.<sup>15</sup>

### **3. Classification of Sentences under Nigerian Legislation**

In Nigeria, in as much as the different laws or codes governing the criminal code and the penal code<sup>16</sup> in respective states are mostly the same, there are still slight differences. Furthermore, sentencing is an exercise of a discretionary power to an extent by the courts, even though they are guided by the laws, this still leaves the courts with certain discretion. Consequently, the courts may accommodate individual inclinations or make out different sanctions for the same offence. The difference in approach has become a problem in the society when it presents the criminal justice system as inconsistent and unjust.<sup>17</sup> Some of the sentences include; death sentence, stoning to death, amputation, confinement, imprisonment, fine, caning, forfeiture, *haddi-lashing*, deportation.

#### **a. Death Sentence**

Mandatory sentence for a capital offence and leaves the judge with no discretion.<sup>18</sup> It is only the High Court that can pass such a sentence as capital offences are only triable by Magistrate's Courts. The capital offences which carry a death sentence include Murder Culpable homicide punishable with Death. The punishment of death is usually inflicted by hanging the offender by the neck until he be dead. A death sentence is pronounced thus; 'the sentence of this court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.'

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> This is a code wherein *Shari`ah* is adulterated in Nigeria.

<sup>17</sup> NIALS, 'Criminal Justice System in Nigeria' Vol. 1) (2011) *Journal on Criminal Law: Journal and Justice*.

<sup>18</sup> J.A. Agaba, *Criminal Litigation*, 1<sup>st</sup> Edn, 2014) 824.

b. Imprisonment

It is a very common type of sentence which is served in a government prison until the expiration of the term of imprisonment. A sentence of imprisonment may be concurrent or consecutive.

c. Fine

This is the payment of money as a punishment. Some offences are expressly declared to be punishable by fine. The court also has a general power to fine a convict in lieu of sentencing him to imprisonment even where the law creating the offence does not specifically provide for imposition of fine.<sup>19</sup> When the convict is unable to pay the fine, he may be ordered to be imprisoned.

d. Caning

Is another type of sentence available both in the Northern and Southern part of Nigeria even though it is not available against all types of offenders. This sentence cannot be passed on a woman or on a man that has attained the age of 45 years and above. Caning shall be with light rod or cane or birch, and the number of strokes shall be specified in the sentence and shall not exceed twelve and where a person is convicted of one or more offences at one trial the total number of strokes awarded shall not exceed twelve.<sup>20</sup>

e. *Haddi*-lashing-

This is prescribed under the Criminal Procedure Code and is peculiar to this CPC states with respect to offence bordering on immorality which is only applicable to Muslim men. The offences in which this sentence may be imposed include adultery, defamation, injurious falsehood and drunkenness. This sentence is not necessarily to inflict pain as in the case of caning rather it is meant to disgrace the convict. It is therefore merely a symbolic sentence.<sup>21</sup>

f. Forfeiture

This sentence has to do with seizure of property as a punishment for a person's offence. Forfeiture may be more in the nature of an ancillary order made after conviction than a substantive sentence. It is usually imposed in respect of offences bordering on property illegally acquired or illegally produced or used for illegal production, bribe. Section 19 of the criminal code provides that the court may in addition to or in lieu of any penalty which may be imposed order the forfeiture to the State of any property which has passed in connection with the commission of the offence of bribery.

g. Deportation<sup>22</sup>

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<sup>19</sup>Ibid.

<sup>20</sup>CPA S 387

<sup>21</sup>J.A. Agaba, at. P 836

<sup>22</sup> CPA (n 9) S 402.

This usually applies in relation to a foreigner in a state or country who commits an offence. It may apply to both Nigerian citizens and non-Nigerian citizens. It may be imposed in addition to any other sentence or it may be a sole sentence. Deportation when imposed against a Nigerian citizen may mean to remove the convict from the place where the offence was committed to any other part of the country in the interest of justice. In the case of a foreigner to Nigeria, where he is found to be engaging in dangerous conducts and acts considered to constitute a threat to the society, he may be deported. It should be noted that deportation as a punishment is not ordered by the court as the court does not have power to deport a foreigner. What the court does is to recommend to the Minister of Internal Affairs that a certain convicted person should be deported. The Minister who has the power of deportation may, based on the recommendation order the deportation of the foreigner.

#### **4. Requisite factors prior to Sentencing upon Proof of an Offence under Islamic Law**

As it is no gainsaying that the aim of Islamic principles for crimes and punishments is to uphold justice, morality, and social order. Punishments are therefore reflective of divine justice, showcasing the significance of evidence, fairness, and equity. It is therefore a matter of concern that the factors to be considered before sentencing are heavily dependent on the crime alleged. There are several contextual and personal elements needed to look into such as:

- i. Quantum: the value of the stolen property (*Nisab al-Sariqa*- three *dirhams* or one fourth of a *dinar*)
- ii. Age of the Offender
- iii. State of mind
- iv. Sanity
- v. Status-married (sullied), single (unsullied), man, woman, pregnancy, freeborn or slave
- vi. Injunction-*Qur'anic*, *sunnatic* or juristic
- vii. Amenability

#### **5. Guidelines and principles of Sentencing**

Sentencing guidelines are designed to indicate to the judges the expected sanction for particular types of offences. The Guidelines and principles are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences in a way that:

1. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this regard therefore, a court that imposes a sentence shall take into consideration the principles governing sentencing at the trial court; Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent.
2. A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender
3. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances
4. An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances
5. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of young and vulnerable offenders
6. A fine must not be too heavy for the offender to Pay. Separate fines imposed on different count sat the same trial are to be cumulative but the aggregate must be within the Court's jurisdiction.
7. The court must put into consideration some factors like the age of the convicted person, whether the accused is a first offender, as a Nigerian court noted,<sup>23</sup> the seriousness of the offence, the prevalence of the particular offence, the non-repentant attitude of the offender and the adverse effect of the offence on the victim to determine whether sentence may be mitigated or aggravated.

## **6. Constitutional Challenges and Prospects of Sentencing under *Shari'ah* and Nigerian Legislation**

The intersection of sentencing under Islamic law and Nigerian legislation is faced with the most critical challenging facts.

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<sup>23</sup>*Ali v FRN* [2016] LPELR 40472 CA

**a. Challenges:** the integration of Islamic sentencing and Nigerian legislative sentencing face a lot of constitutional hurdles; as make the application of Islamic law and Nigerian legislation side by side in Nigeria has led to several conflicts and complementarity to wit:

**i. codification-** as against Nigerian law status, even though written, the Islamic law cannot be codified the same way like a state law, and neither can Islamic law be enforced purely by the state of Nigeria. Technically, the law loses its value as a matter of codification.<sup>24</sup> It is a position that coercive enforcement of Islamic law betrays the teaching of *Qur'an* on voluntary embracement of Islam as a religion.<sup>25</sup>

**ii. discrimination-** in Nigeria, sentencing faces with major constitutional challenges as it relates to human dignity, fair hearing, legislative powers, and freedom from discrimination. It is often debated that *Shari'ah* modes of punishments such as stoning, hand and leg amputations, as well as flogging, lashing or caning are corporal. The promotion of the 1999 constitution is to prohibit all the form of Islamic sentencings and be regarded as torture, inhuman or/and degrading treatments. It is inconclusively therefore that the *Shari'ah* courts have the power to entertain criminal cases. Meanwhile, criminal *Shari'ah* cases have continued to appear and reappear in Nigeria without a clear procedural stance.<sup>26</sup>

**iii. representation-**litigation seems personal under Islamic law as prophet of Islam said in a tradition narrated by Bukhari that:

if you come to me and one of you is eloquent than the other and I judge in his favour, thinking he is upon truth, and he takes his brother's right, then let him not take it, for only cut for him a piece of fire.<sup>27</sup>

It is therefore procedural that under Islamic law hearing is based on face-to-face confrontation whereby parties are both heard directly. In other words, the prevailing practice under Nigerian law, is a fear hearing considering the representation of a counsel (*waki'l*) or any person of choice

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<sup>24</sup> A.A. Al-Na'm, *Islam and Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008).

<sup>25</sup> Ibid at <[www.amazon.com/islam](http://www.amazon.com/islam)> accessed on 13 September 2026 at 8:35pm.

<sup>26</sup> Human Rights Watch, 'Shari'a and the Nigerian Constitution' at <<https://www.hrw.org>> accessed on 15<sup>th</sup> September 2026 at 7pm.

<sup>27</sup> M.I. Bukhari, *Sahih Al-Bukhari*, (Cairo: Da'r Ibn Hazm, 2002) (No: 6967).

allowable by the law. This is part of fundamental rights enshrined under Nigerian constitution.<sup>28</sup> And *Shari'ah* court is a court established under Nigerian laws,<sup>29</sup> the refusal of counsel representing a client will not be tenable as it will be considered null and void.

**iv. conflict-** Nigerian sentences are always passed but as regards Islamic sentencing in Nigerian courts, there has always been a war for it to be executed due to several debates occasioned. It is a part that Nigerian judicial practice has been faced with, whereby Islamic sentencings have always been set aside on appeal, commuted or delayed. The Islamic punishment operation is being as of today, constitutionally compromised because of one or two outcries. The pluralism of Nigerian legal system keeps creating constitutional challenges by intensifying divide, conflict and judicial tension.<sup>30</sup> The major key conflicting areas in sentencing under Islamic law and Nigerian legal system are but not limited to: religious constitutionality, jurisdictional discrepancies, philosophical divergence, and constitutional supremacy.<sup>31</sup>

**v. secularity-**the perpetual argument that the *Shari'ah*-compliant proceedings challenge the secular spirit of human peaceful co-existence has left many wonders as the debate linger. Despite the adoption of Islamic law across the globe, the implementation is being inconsistent due to trajectory of the application. The status in Nigeria remains complex and despair due to discrepancies in interpretation and actual application.<sup>32</sup> The application sparked many controversies as some debaters agreed that it is a necessary legal system that showcases the Nigeria's cultural and religious diversity. On the other hand, some argued that the implementation of Islamic law deprives non-Muslims their rights as it makes them less human in the eyes of equality.<sup>33</sup> For instance, it is often misquoted as secularity when the constitution states that government of the Nigerian federation or

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<sup>28</sup> CFRN (n 19) s 36(6) c.

<sup>29</sup> Ibid s 6(5).

<sup>30</sup> Human Rights Watch, (n 58).

<sup>31</sup> Ibid.

<sup>32</sup> M.U. Abdullahi, 'Jurisdictional Issues in the Application of Islamic in Nigeria' A Paper presented at the 2021 All Nigeria Judges' Conference of the Superior Courts-Organized by the National Judicial Institute between 15<sup>th</sup>-19<sup>th</sup> November 2021 at Andrews Otutu Obaseki Auditorum, Abuja.

<sup>33</sup> A.S. Olajide, 'Sharia Law in Nigeria: Challenges and Strategies for Effective Implementation' *An Investigative Research inspired by the Lectures of Dr. Amoloye-Adebayo, A.O, Head of Department, Department of Islamic Law, Faculty of Law, University of Ilorin* at <<https://www.researchgate.net>> accessed on 17 September 2026 at 7am.

state shall desist from adopting a state religion.<sup>34</sup> This does not imply that Nigeria is actually secular without religion rather Nigeria exists with multi-religions by the provision of the constitution.<sup>35</sup>

**b. Prospects:** the application of Islamic law across the globe has often been prosperous, besides, the application of Islamic law has always revolved round a country constitutional permissibility of the concerned state. In Nigeria, the constitution created Islamic courts with their powers of functionality even though it is sometimes argued that Nigeria is a country surviving under secularity. The prospects achievable from the intersection of sentencing under Islamic law and Nigerian legislation are therefore to as:

**i. integration**-the concept offender integration between Islamic and Nigerian sentencing is a critical legal landscape bridging modern retributive justice and religious based jurisprudence. In many countries where *Shari'ah* is adopted as part of the laws practicable, the regimes are statutorily governed by legislations and state-enacted Islamic penal codes. The objective integration making sentencing prosperous has revealed the uniqueness of the philosophical legal frameworks. This integration of multi-legal systems poses modern opportunity alongside penal and civil legislations in many instances.

**ii. Guideline harmonization**-this is practicable and acceptable reformation of both Islamic and Nigerian modes of sentencing. It is to the effect that sentencings for same offences under two or more different legal systems found existing in the same country are brought under one singular guideline. The guideline contains a merged harmonized code catering for different judicial legal existences other than abolishing one for the other. This is a prospect satisfying constitutional supremacy by integrating Islamic objectives. It is a style modeling a-more-than-one-tier-sentencing. This resolves structural tensions of secularity<sup>36</sup> challenge and seems acceptable by all politically.

**iii. institutionalism**-as a highly promising framework for reforming sentencing, institutionalism bridges the gaps between modern realities and historical existence surrounding Islamic moral objectives and Nigerian legislations. Emphasizing that laws are far from being abstract, institutionalism contends that the command of sovereignty is sustained with shaping organized

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<sup>34</sup> CFRN (n 19) s 10.

<sup>35</sup> Ibid s 38.

<sup>36</sup> A.M. Tijah, 'Articulating Sentencing Guidelines to Structure Judicial Sentencing Discretion in Nigeria' Vol. 11) (No: 1) (2021) *University of Ibadan Law Journal*

structure, systemic norms and formal agencies. By way of intersection, institutionalism is a mechanism producing criminal justice and stability, respect for human dignity and legal uniformity and tolerance.<sup>37</sup> The operational combination of the received English law, customary law and Islamic law in Nigeria is only effective due to robust intuitional frameworks that support their partnership. It is therefore plausible to say that the greatest institutional prospect for sentencing under both Islamic and Nigerian legal systems lies within doctrine of governance viz-a-viz public interest and societal tolerability. The interests for public are better achieved by the state institutionalizing a formal penal code as modern institutional tool for the state to function as one single co-existent community.

**iv. supremacy**-as the constitution is provided to be supreme,<sup>38</sup> the establishment of any law including Islamic law is as good as the constitution itself for being the offshoot of the constitution. If for instance, *Shari'ah* passes the supremacy test on sentencing, it is no longer inconsistent. The sentencing thereby under Islamic law protected by its constitutionality. Besides, the constitution empowered the state to make laws to maintain public peace, and order for the benefit of the citizens.<sup>39</sup> When this is in existence, the sentencing is agreed to comply with the constitutional provision. Having appeared to be a matter of law and fact that *Shari'ah* nowadays, has become part of some countries' legislations which Nigeria as a country is not a difference, Islamic law sentencing is constitutional supreme except to the extent the provisions disallow.

**v. standardization**-the institutionalization of penal codes on sentencing serving as guide, has curbed a lot of judicial arbitrariness by introducing systemic checks on penalty. Convincingly, the adoption of strict institutional rules for proof has been systematically discouraging harsh and arbitral convictions. This system drastically reduces discrepancies in sentences awarded by the judges for similar offences. The standardization of courts particularly the *Shari'ah*-compliant ones into formal and constitutional approved courts ensures the validity and competence of the judgments delivered by those courts not until a superior court set them aside.

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<sup>37</sup> O.G. Izevbuwa, R.A. Ngwoke and I.P. Mbano, 'An Examination of the Statutory and Institutional Frameworks for Implementing non-Custodial Measures in Nigeria's Criminal Justice Administration' Vol. 3) (1) (2023) *International Journal of Criminal, Common and Statutory Law* 01-11

<sup>38</sup> CFRN (n 19) s 1.

<sup>39</sup> Ibid s 4.

## 7. Comparison between Islamic Legal Sentencing and Nigerian Legal Sentencing

Fundamentally, the intersection of Islamic and Nigerian legal sentencing is without no difference particularly in the objectives, guidelines, procedures and framework. The analysis and intersection of Islamic legal and Nigerian legal sentencing coupled with the received English system of law in Nigeria created a hybridity in the laws applicable in Nigeria as the effort in placing the received English law, customary law and Islamic law<sup>40</sup> side by side is revolutionary.<sup>41</sup> The comparative analysis of Islamic sentencing and that of Nigerian legal sentencing is therefore subdivided into the following variables:

**i. jurisdiction:** universally, the application of Islamic law extended to benefit every man whether a Muslim or non-Muslim<sup>42</sup> but under the Nigerian law, the application of the laws is affected by its plurality due to ethno-religious and cultural diversities of the people of Nigeria. The applicability of some laws such as *Shari'ah* is therefore limited to Muslims and any other person who consented.

**ii. Proof-** the proof of commission of any offence under *Shari'ah* revolves around certainty by number of witnesses, confession and oath taking. The standard of proof required under Islamic is beyond all shadow of doubt but under Nigerian criminal system is beyond reasonable doubt.<sup>43</sup> Determining reasonable doubt is not comparable to the standard under Islamic law which desired every doubt to be resolved and ascertained.<sup>44</sup> The standard only suffices with just a remote possibility other than absolute certainty as required under Islamic law and all shadow of doubt.<sup>45</sup>

**iii. procedure-** under Nigerian law, the constitution provides for rights to counsel, fair hearing and that there cannot be conviction for any offence without the offence being mentioned in a written law<sup>46</sup> unlike under Islamic law, whereby individual is expected to present his or her cause and the fundamental principle of hearing is that the proof is upon the allegor while the denier is only expected to deny liability by way of oath when the allegor is not able to prove the allegation

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<sup>40</sup> CFRN Ss 38, 260, 264, 275, 277, and 284.

<sup>41</sup> M. Lawal, 'Islamic Law and Legal Hybridity in Nigeria' Vol 58) (Issue 2) (2014) *Journal of Africa Law* (Cambridge University Press & Assessment) at <<https://www.cambridge.org>> accessed on 12 September 2026 at 8pm.

<sup>42</sup> M.T. Al-Hilali and M.M. Khan, (n 20) at Qur'an 7:158.

<sup>43</sup> Evidence Act (EA) (2011) (As Amended) s 135: *Dibia v State* [2018] 9 NWLR (PT 1624) P 259 SC.

<sup>44</sup> *State v Aibangbee* [1988] 3 NWLR (PT 84) P 548 SC.

<sup>45</sup> *Miller v Minister of Pensions* 2 All ER 372.

<sup>46</sup> CFRN (n 19) ss 36 (6 & 12), 38, 260, 264, 275, 277, and 284.

convincingly, and some instance, it is better for the person who is alleging to ascertain or be ready to face responsibility for an offence such as *Qadh*.<sup>47</sup> In other words, even though there cannot be punishment where there is doubt, still where the allegation under Islamic law bothers on morality, the judge has discretionary right to award a warning sentence.

**iv. execution-** in Nigeria, the execution of sentence is organized and supervised by the government.<sup>48</sup> No sentence can be executed without a warrant endorsed by the officer(s) of the government both within Federal Capital Territory and beyond.<sup>49</sup> In Islam, executing sentence is termed as *tanfeeth al-uqubah*-carrying out the punishment. This is governed by the *Qur'an*, *Hadith*, *Ijma'*, *Qiyaas* and others. As *al-hudu'd* are rights of *Allah*, the execution is therefore considered to be done by the state for being the shadow of *Allah* and not individual(s). As *ta'zi'r* punishment is judicial discretion of a judge, the execution lies with judicial officer(s). For *Qisa's*, the victim's family (*awlia' al-dam*) are left with three (3) possible options, to wit:

- i. state is demanded to execute on their behalf,
- ii. to forgive whole heartedly; or
- iii. to accept blood money compensation (*Diyyah*).<sup>50</sup>

**v. peacefulness-**The Islamic legal system as compare to the Nigerian legal system provides a peaceful and cleaner society unlike Nigerian legal system where the ethical norms of the society are always violated for example in Nigeria and some western world countries such as Norway, Sweden and a number of some others homosexuality and lesbianism are still subjects of debate for criminalization unlike under Islamic law where the position was already conclusive.<sup>51</sup> Similarly, not quite long Spain passed a law for legalizing adultery.

**vi. morality** - in contrast to the higher percentage of immoral and un-ethical laws of Nigeria, Islam provides a system based on natural and divine law where the norms and ethical values are highly respected.<sup>52</sup>

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<sup>47</sup> M.T. Al-Hilali and M.M. Khan, (n 20) at Qur'an 24:6-9.

<sup>48</sup> Administration of Criminal Justice Act (ACJA), 2015 s 382

<sup>49</sup> Ibid.

<sup>50</sup> M.T. Al-Hilali and M.M. Khan, (n 20) at Qur'an 24:2.

<sup>51</sup> Hugo, A. Bedau., 'Punishment, Crime and the State', *Stanford Encyclopaedia of Philosophy*, Retrieved 2014-4- 10 from <http://plato.stanford.edu/entries/legal-punishment/> #PunCriSta (2010)

<sup>52</sup> McAnany and D. Patrick, 'Justification for punishment', *Grolier Multimedia Encyclopaedia* Retrieved 2014-4-10 (2010).

**vii. uniqueness** - the deterrent nature of punishment of Islamic law ensures greater peace in society. One can therefore find unique characteristic of Islamic law showing a remarkable difference from the Nigerian legislation.<sup>53</sup> The unique salient features of *Shari'ah* law depict the significance of Islamic law over the Nigerian legal system.

**viii. reliability**- no one can be punished merely on the suspicion that he has committed the crime until it is proved by the prescribed number of reliable witnesses. The strict procedure to be observed for the reporting of crime preserves the integrity of mankind. Strict punishments should be awarded to those who bring allegation against someone and then fails to prove those allegations. Islam prohibits such kind of system where every member of the society lives like suspects.

## 8. Recommendations

Based on the findings of this research, the following recommendations are made:

**i. uniformity and harmonization:** as a matter of fact, procedural gaps resulting to non-execution of most of the Islamic sentencing can be addressed by major law reform, practice, procedure and policy that will whole-heartedly and basically on the large consideration codify total Islamic law at least for Muslims in the country if not all to ensure uniformity on the basis of religious right and consistency to the constitution.

**ii. firmness:** the adherence to the principle of doubt should continue to apply and be stricter. This helps to protect and safeguard carriage of justice.

**iii. peaceful co-existence and capacity building:** ensuring co-existence of the Islamic and Nigerian sentencing principles within the same jurisdiction, the judges are recommended for regular training in order to be able decipher and appreciate Islamic principle of sentencing on the face of the constitutional limits. In other words, the duality of the legal system may be sustainable but there should be a push for proper and adequate convergence. That is both laws should lend each tolerance and credence.

## 9. Conclusion

In practice, right outset of Islamic history, criminal cases were usually handled by ruler-administered courts or local police using procedures which were only loosely related to *shari'ah*. The main objective of punishment in Islam is to prevent the commission of crime. For this purpose,

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<sup>53</sup> *Alkamawa v Bello* [1998] 3 NWLR (PT 542) P 331.

Islam provides a system of imposing harsh punishment on the criminals in the modern era, *shari'ah*-based criminal laws in Nigeria were widely replaced by statutes inspired by European models, although in recent decades several countries like Nigeria reintroduced elements of Islamic penal law into their legal codes under the growing influence of Islamist movements. This notwithstanding the objects of which punishments are meted not only under *shari'ah* but also Nigerian legislation, are preventive, regulative, reformative/rehabilitative and retributive. There are two conditions for retribution under the two laws. One condition is that the victim seeks punishment for the wrongdoer. The other is that the victim demands compensation for the loss or he may even forgive the offender, however, if he seeks compensation, it must not be more than the loss incurred. It means that the object of *Qisa's* is not vengeance but reconciliation and thus punishment can be avoided under *Qisa's*. This research therefore examined sentencing under Islamic law and Nigerian legislations. It is centrally found that there is no actual irreconcilable disparity per se but in the models of application, and procedural guides. Some critical issues such as secularity, legal representation and supremacy of the law found partially unresolved; and however, that the prospect for peaceful co-existence of the two legal systems does not lie on abolition of one for other but rather on harmonization and uniformity.