

ISLAMIC LAW IN NIGERIA: APPLICATION AND TEACHING (1988)

By Syed Khalid Rashid (ed.). Islamic Publications Bureau, 136-A, Isolo Road, Muslim, Lagos, Nigeria. Pp. xviii + 309. Unpriced.

ISLAM PENETRATED into Nigeria through trans-Saharan trading links of the ancient time and the middle ages. It reached Northern Nigeria in about 9th century and began to take firm roots. The persons belonging to the Islamic fraternity, particularly in the north, were totally governed by the Islamic law but after the advent of the colonial rule, there was a gradual phasing out of the Islamic Criminal law, Commercial law, Evidence and so on by a series of legislations starting from colonial period and continuing even after independence due to the lack of the understanding of the true meaning of the implications of the *Shariat* to those who claim Islam as their religion. The *Shariat* not only ceased to be the ultimate legal basis and the sole test of legitimacy but its very application became dependent on the laws introduced by Britishers. It was relegated and restricted to civil matters and other personal issues such as marriage and inheritance, while English law claimed monopoly over all other forms of law such as Constitutional, Criminal and Commercial. The Nigerian Constitution of 1979 reduces *Shariat* to the narrow confine of "personal status" and subordinates it to the English common law as the majority of the Muslims still favour the enforcement and observance of rules of the *Shariat* only to the extent that they are not repugnant to natural justice, equity and good conscience. What the Constitution does by limiting the application of the *Shariat* to that narrow angle, and refusing its operation as a complete legal system with its customs, traditions and values, is to pave the way for its eventual elimination in favour of the English system.

Muslims, at present, constitute an overwhelming majority of the population of Northern States of Nigeria and form more than half of the entire population of the country. Despite this fact, common law rather than *Shariat* serves as the main judicial Code and procedure. The present truncated form of Islamic law and the overall attitudes towards it, is the end product of the colonial tyranny. Therefore, the teaching of the Islamic law has not received the attention it deserved. As an academic discipline it is taught only in Ahmadu Bello, Bayero, Maiduguri and Sokoto Universities in Nigeria. In addition, publications in this sphere of knowledge have been scanty. Therefore, the book¹ under review is a move in the right direction. The book is inspired by a national workshop on the "Teaching of Islamic Law in Nigeria" held at the University of Sokoto, Nigeria in June 1983. It is a collection of eighteen papers written by eminent scholars, from abroad as well as within the country, in the field of the application and teaching of Islamic law in Nigeria.

Besides the foreword, preface, contents, list of contributors and the

1. Syed Khalid Rashid (ed.), *Islamic Law in Nigeria: Application and Teaching* (1988).

introduction by the editor, there are three parts of the book. The first part, which comprises of five writings, is devoted to the application of Islamic law from pre-*Jihadist* period to the present day and brings out some of the salient features regarding the position of Islamic law during the 18th century, the improvements effected under Sokoto Caliphate, the impact of colonialism on *Shariat* and post-independence landmarks in the legislative and judicial history of Islamic law in Nigeria. The contributors of these writings are at their best traversing the nooks and crannies of the subject. The shorter pieces on "The application of Islamic law in Nigeria,"² and on the "Constraints in the application of Islamic law in Nigeria"³ are as important as the more elaborate ones such as "*Shariat* and the Constitution,"⁴ "Aspects of administration of justice in the Sokoto Caliphate,"⁵ and "Muhammad Bello's ideal of criminal and political justice."⁶ These writings offer explorations and a succinct account on the genesis and development of Islamic law in Nigeria.

The second part, which is based on thirteen papers, relates to the teaching of Islamic law in Nigeria. These papers broadly deal with course content, teaching material and teaching methodology of Islamic law. These writings propose to overview and analyse objectives, approaches and teaching methods, employed or to be employed in Islamic legal education in Nigeria. All sources of *Shariat* are preserved in Arabic language and the contributions of the early jurists to *Shariat* have been in Arabic. Therefore, scholars suggest that all the universities in Nigeria offering law but which are not teaching Islamic law should start to teach it and the universities where Islamic law is being taught as a major course component, Arabic should be made compulsory to equip the students with enough knowledge of the language which should enable them to study any prescribed standard Islamic law book in Arabic.⁷ The teaching of Islamic law should not be confined to the topics presently covered under the so called phrase of "Muslim personal law" but should cover every facet of Islamic law.⁸ A partial study is not adequate to give the students a comprehensive view of Islamic law.⁹

Some papers reveal that one of the major problems facing students and teachers in Nigeria is the non-availability of text books on Islamic law in English.¹⁰ These writings fully recognise the urgent need of producing enough teaching material on Islamic law in English and suggest that the universities in which Islamic law is presently taught should make individual and joint efforts to meet this need by producing monographs, translations,

2. *Id.* at 42-51.

3. *Id.* at 75-85.

4. *Id.* at 52-74.

5. *Id.* at 10-27.

6. *Id.* at 28-41.

7. *Id.* at 201-209.

8. *Id.* at 93-98, 105-106, 168-170 and 175-176.

9. *Id.* at 105.

10. *Id.* at 99 and 115.

anthologies and must facilitate the publication of suitable manuscripts dealing with Islamic law.¹¹ The books on Islamic law which contain distortions or misrepresentations of *Shariat* should not be recommended as text books for any course in Islamic law.¹² The judgments of the *Shariat* Courts of Appeal and judgments on *Shariat* matters of the Federal Court of Appeal can be used to illustrate a point of law while teaching it in a class room.¹³

The question of methodology of the teaching of Islamic law has been the subject of some of the papers.¹⁴ The "lecture method" could not in itself be sufficient to teach a professional course like law. This is true for Islamic law teaching too. Supplementary teaching aids that may be employed include tutorials, legal writing, court attendance and court attachment.¹⁵ A combined approach, involving both the "lecture" and "case method" should be adopted.¹⁶ The lectures provide guidance and basics needed by the student. The "case method" approach aids in inculcating in the student a sound appreciation of the facts studied by him. The level of education of most of the students at diploma and degree level is not suitable for independent study and opinion formation. The "seminar method" cannot, therefore, be used at the degree level. This method can be gainfully employed at LL.M. and Ph.D. levels to replace "lecture method" currently used.¹⁷ However, for a proper emphasis on the study of Islamic law in a social context a "project method" could be evolved. A group of students may participate in the project. The students under the guidance of the teacher may select a socio-legal problem and study its social and legal dimensions empirically. On the basis of these empirical foundations they may then attempt to delineate the legal problem and the solution that may be offered within the framework of the Islamic law. These projects can be taken in such areas as Islamic Commercial, Family and Criminal law.

Part III of the book contains number of appendices throwing light on the resolutions passed at the National Workshop on the "Teaching of Islamic Law in Nigeria,"¹⁸ "Keynote address" by Grand *Kadi*, Sokoto State,¹⁹ "Address" by Vice-Chancellor²⁰ and the "Welcome address" by Acting Dean of Law.²¹ The *Shariat* Court of Appeal Law, 1960 is given in appendix V and so also important provisions of Area Court Edict, 1967 in appendix VI and certain Sections of 1979 Constitution in a separate appendix VII. The

11. *Id.* at 99-102, 106-107, 115, 123-128 and 161-164.

12. *Id.* at 99-102, 124 and 129-140.

13. *Id.* at 102.

14. *Id.* at 105-108, 142-153 and 156-164.

15. *Id.* at 103.

16. *Id.* at 107.

17. *Id.* at 151.

18. *Id.* at 212-214.

19. *Id.* at 215-218

20. *Id.* at 219-221

21. *Id.* at 222-223,

statutory provisions contained in the Appendices are given with the purpose of making available to the readers some of the material which otherwise could be inconvenient to reach.

In view of the apparent importance of the case of *Mallam Ado and Hajija Rabi v. Hajija Dije*,²² wherein the Federal Court of Appeal, Kaduna, pointed out the anomaly in the administration of Islamic law in view of the conflict between section 63 of the High Court Law, 1963 and section 235 of the 1979 Constitution, it is reproduced in full in appendix VIII. The LL.B. *Shariat* syllabi of the Islamic University, Medina and LL.B. syllabi of Ahmadu Bello, Bayero, Maiduguri and Sokoto Universities in Nigeria have been given in appendix IX and X respectively. The subjects offered in various diploma courses in *Shariat* at Ahmadu Bello and Maiduguri Universities in Nigeria have been incorporated in appendix XI.

While the book was in the press, an important constitutional amendment came in November 1986 which indirectly enlarged the jurisdiction of the *Shariat* Courts of Appeal by bringing within their jurisdiction all such disputes relating to Islamic law matters that used to go to State High Courts. This amendment also took care of the situation created by the decision of the Federal Court of Appeal, Kaduna in *Hajija Rabi's case*²³ debarring the *Kazis* of the *Shariat* courts from sitting on the Bench of the State High Courts as full members. Soon after the constitutional amendment was made, it was reviewed by the Kaduna High Court in *Hajija Laila Dogon Yaro v. Alhaji Jimoh Bello*²⁴ on the score that it does not enlarge the jurisdiction of the *Shariat* Courts of Appeal and the "other" Islamic law matters should continue to go in appeal to the State High Courts. In view of the importance of these developments and a judgment delivered by the *Shariat* Court of Appeal, Plateau State in *Alhaji Salifu Jabrin v. Alhaji Umaru Uja*,²⁵ appendix XII has been inserted which includes the relevant constitutional amendment, text of the judgment of the Kaduna High Court, a brief comment on this judgment by the editor and the relevant part of the *Shariat* Court of Appeal, Plateau State judgment.

The book is well documented and every subject has been discussed at its proper place. It systematically deals not only with the application and teaching of Islamic law in Nigeria but also peeps into the future of *Shariat* in Nigeria. The scholars have candidly and lucidly discussed the discriminatory treatment given to the *Shariat* by successive governments in Nigeria. The wide coverage given to the field of application and teaching of Islamic law in Nigeria without being bulky and incorporation of up-to-date statutory provisions and judgments in appendices are the special qualities of the book. The list of cases and the name index have enhanced the utility of the book to the reader.

22. F.A.C./K/69/82 (unreported).

23. *Ibid.*

24. K.D.H./24A/86.

25. B.N.S./S.C.A/C.V.2/86.

The book is informative. It is handy with an attractive appearance. The paper and printing are reasonably good. The book should find a place in law libraries in this country.

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